(18,837.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 219.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING COMPANY, PETITIONER,

vs.

THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Original.	Print.
Caption	*a*	1
Transcript from United States circuit court for the district of Colorado	1	1
Caption	1	1
Transcript from district court of El Paso county, Colorado	1	1
Caption	1	1
Petition for an order of inspection, etc	2	2
Exhibit A—Notice of demand to be permitted to inspect and survey the Uintah tunnel, June 5, 1897	4	4
Order fixing time for hearing upon petition for an order of inspection, etc	4	4
Complaint	5	5
Answer to petition for order of inspection, etc	9	8
Order granting authority to inspect the Uinta tunnel, etc	10	10
Petition for removal to Federal court	12	11
Bond for removal	14	13
Order of removal	15	14
Summons and sheriff's return	16	15
Clerk's certificate to transcript from State court	18	17

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 12, 1903.

	Original.	Print
Order fixing time for defendant to plead to complaint	18	17
Order continuing hearing on application for injunction	19	18
Motion to require plaintiff to separate and separately plead causes of action	19	18
Order denying motion for injunction	20	19
Answer to complaint	21	20
Order transferring cause to the law docket, etc	37	33
Amended complaint	37	34
Order fixing time for defendant to answer amended complaint	39	36
Answer to amended complaint	40	36
Demurrer to portions of answer	54	51
Order granting leave to withdraw patent to Ocean Wave and Little Mary Lode mining claims	56	52
Record entry as to placing pleadings in proper form	56	52
Order of submission of motion to strike portions of answer	57	53
Order sustaining motion to strike portions of answer	57	53
Jury impaneled; trial January 29, 1902	58	54
Judgment, January 29, 1902	59	55
Order overruling motion for a new trial	60	56
Bill of exceptions on motion to strike portions of answer	60	56
Answer	61	57
Motion to strike portions of answer	75	71
Order sustaining motion to strike portions of answer	76	72
Exceptions to order sustaining motion to strike portions of answer	77	72
Certificate of judge to bill of exceptions	78	74
Bill of exceptions	79	74
Statement by Mr. Lee	79	75
Testimony for plaintiff	80	75
Testimony for defendant	82	77
Testimony of L. W. Davis	82	77
W. R. Mason	90	84
Thomas J. Maloney	92	86
James Doyle	94	88
John T. Hawkins	96	90
Plaintiff's exhibits	98	92
1. Location certificate of McNeal and Winchell on the Ocean Wave mining claim	98	92
2. Location certificate of Winchell and McNeal on Little Mary lode	100	94
3. Deed, Winchell and McNeal to John N. Bartels, March 4, 1892	102	96
4. Deed, Winchell and McNeal to Geo. M. Carter, March 10, 1892	106	99
5. Deed, Winchell and McNeal to J. T. Estill, February 13, 1892	109	102
6. Deed, Winchell and McNeal to Shimp and Bassett, February 10, 1892	112	105
7. Deed, Winchell and McNeal to H. M. Fitzhugh, February 1, 1892	115	108
8. Deed, Winchell and McNeal to C. E. Hudson, February 8, 1892	119	111

	Original.	Print
9. Deed, Winchell and McNeal to C. E. Hudson, February 8, 1892	122	114
10. Deed, H. E. Bassett *et al.* to the Creede and Cripple Creek Mining and Milling Co., March 23, 1892	125	117
11. Deed, J. N. Bartels to Creede and Cripple Creek Mining and Milling Co., May 25, 1892	128	119
12. Deed, C. E. Hudson to the Creede and Cripple Creek Mining and Milling Co., April 8, 1892	130	121
13. Amended location certificate of the Creede and Cripple Creek Mining and Milling Company	133	123
14. Amended location certificate of the Creede and Cripple Creek Mining and Milling Co. on the Little Mary lode	135	125
15. Patent, United States to the Creede and Cripple Creek Mining and Milling Company, Dec. 21, 1893	138	127
Defendant's exhibits	142	131
A. Memorandum as to	142	131
B. Location certificate of Uinta Tunnel Mining and Transportation Co. to Uinta Tunnel No. 23 lode	142	131
C. Location certificate of Uinta Tunnel Mining and Transportation Co. to Uinta Tunnel No. 24 lode	144	133
D. Location certificate of Uinta Tunnel Mining and Transportation Co. to Uinta Tunnel No. 25 lode	146	135
E. Location certificate of Uinta Tunnel Mining and Transportation Co. to Uinta Tunnel No. 26 lode	148	136
F. Location certificate of W. R. Mason *et al.* to Uinta Tunnel claim	150	138
G. Location certificate of Vance Carothers on the Black Jasper lode	152	140
H. Location certificate of S. P. Chalfant *et al.* on the Uinta Tunnel Lode No. 1	154	142
Recital that record contains all the evidence	156	144
Defendant's requests for instructions and exceptions to rulings thereon	156	144
Court's charge to the jury and defendant's exception thereto	158	145
Motion for a new trial	159	146
Judgment and exception thereto	161	148
Certificate of judge to bill of exceptions	162	148
Assignment of errors	162	149
Petition for writ of error	185	168
Bond on writ of error	186	169
Writ of error and clerk's return	187	170
Citation and acknowledgment of service	189	172
Clerk's certificate to transcript	190	173
Certificate of clerk of United States circuit court of appeals to printed record	191	173
Caption to proceedings in United States circuit court of appeals	192	174
Appearance of counsel for plaintiff in error	193	175
Appearance of counsel for defendant in error	193	175
Stipulation to correct writ of error and citation	194	175
Order correcting writ of error and citation	195	176

	Original.	Print
Appearance of counsel for plaintiff in error	196	177
Order of submission	196	177
Opinion of United States circuit court of appeals	198	178
Judgment of United States circuit court of appeals	205	185
Clerk's certificate to transcript of proceedings in United States circuit court of appeals	206	186
Stipulation as to return to writ of certiorari	207	186
Writ of crrtiorari	208	187
Return to writ of certiorari	210	187

a *Transcript of Record.*

United States Circuit Court of Appeals, Eighth Circuit.

THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY, Plaintiff in Error,
vs.
THE CREEDE AND CRIPPLE CREEK MINING AND MILLING Company, Defendant in Error.
No. 1762.

In error to the circuit court of the United States for the district of Colorado.

Filed May 22, 1902.

1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered, that heretofore and on, to wit, the 1st day of November, A. D. 1897, came Scott Ashton, Esquire, attorney for the defendant, and filed in said court a transcript of proceedings heretofore had in the district court of the fourth judicial district of the State of Colorado, sitting in and for the county of El Paso, in a certain cause in said district court lately pending wherein The Creede and Cripple Creek Mining and Milling Company was plaintiff, and The Uinta Tunnel Mining and Transportation Company was defendant.

And the said transcript is in words and figures as follows, to wit:

UNITED STATES OF AMERICA, } ss:
State of Colorado, County of El Paso, }

Pleas before the Honorable Ira Harris, one of the judges of the district court of the fourth judicial district of the State of Colorado, sitting within and for El Paso county, in said State, in division two thereof, at a term begun and held at the court house in the city of Colorado Springs, in the county and State aforesaid, on the 10th day of May, A. D. 1897 (being the second Monday of May), and of the Independence of the United States the one hundred and twentieth.

Present: Hon. Ira Harris, judge aforesaid. Henry M. Blackmer, district attorney. W. S. Boynton, sheriff of said county. Edgar Howbert, clerk of said court.

Attest: EDGAR HOWBERT, *Clerk.*

Be it remembered that heretofore and on, to wit, the 15th day of

June, A. D. 1897, there was filed in the office of the clerk of said court, the petition, which is in words and figures as follows, to wit:

2 STATE OF COLORADO, } ss:
County of El Paso, }

In the District Court.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING COMPANY, Petitioner,
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY, Respondent.

Petition.

Comes now the petitioner above named and shows to the court and gives the court to understand:

First. That petitioner and respondent are each corporations duly organized and doing business in the county of El Paso and State of Colorado, pursuant to the laws of said State.

Second. That petitioner is the owner in fee of the "Ocean Wave" and the "Little Mary" Lode mining claims situate on Battle mountain in the Cripple Creek mining district in the said county and State.

Third. That the respondent is the owner of a certain tunnel known as the "Uinta tunnel" which tunnel commences on the west side of the said Battle mountain, and which said tunnel is being run by the respondent for the purpose of opening and working mines and removing ore therefrom. That in opening and operating the said tunnel the said respondent has entered into the aforesaid mining claims owned by the petitioner, under the surface thereof, and has taken and is now taking and threatens to continue to take a large quantity of ore, the property of the petitioner from the said claims. That the petitioner has no method of ingress into the said tunnel through its own property or works and is therefore fully unable to ascertain the full extent of the aforesaid trespass committed on its property by the said respondent or the quantity or value of the ore taken and removed from the said claims by the respondent and that a knowledge of these facts is absolutely necessary to the petitioner to protect and enforce its rights and interests as against the respondent.

That the character of the said trespass, the extent of the injury done thereby and the quantity and value of ore removed as aforesaid can only be ascertained by an inspection, examination, and survey of the said tunnel and the workings and operations
3 therein carried on by the respondent within the said claims. That the aforesaid mining claims are in the possession of the

petitioner save in so far as such possession has been interfered with and disturbed by the said respondent as hereinbefore set out.

Fourth. That on the 2nd day of June, 1897, the petitioner made demand in writing upon the respondent to permit an inspection, examination, and survey of the aforesaid tunnel, and especially of that part thereof within the property of the petitioner for the purpose hereinbefore set forth, but that the respondent refused to permit the petitioner to make such inspection, examination, and survey, and still refuses so to do, although more than three days had expired since the said demand was made.

That a copy of the said notice served upon the respondent as aforesaid is attached hereto, same being Exhibit "A" and is hereby made a part hereof. That James Doyle, the person mentioned in said notice, and to whom the same is addressed, is, as your petitioner is informed and believes, the president of the said respondent company, and the reputed owner of substantially or practically all the stock thereof, and that your petitioner caused the said notice to be served upon the said Doyle in the belief and with the understanding that he was the proper person upon whom to make said request and has not, by the said Doyle or any one else, been informed to the contrary.

Wherefore, petitioner prays that this honorable court appoint a time and place for a hearing upon this petition, and order that notice thereof be served upon the respondent and that upon such hearing an order for inspection, examination, and survey of the said tunnel be made, said inspection, examination, and survey to be so made in such a manner, and at such time, and by such persons as the facts established shall warrant.

GUNNELL & HAMLIN,
Attorneys for Petitioner.

STATE OF COLORADO, } ss:
County of El Paso, }

J. F. Burns, being first duly sworn according to law, on oath deposes and says that he is the president of The Creede and Cripple Creek Mining and Milling Company, the petitioner in the foregoing proceeding; that he has read the foregoing petition and is acquainted with the contents thereof, and that the matters, statements, and allegations thereof are true.

J. F. BURNS.

4 Subscribed in my presence, and sworn to before me this 14 day of June, A. D. 1897.

[SEAL.]

EDGAR HOWBERT, *Clerk,*
By E. C. DAVIS, *Deputy.*

EXHIBIT "A."

COLORADO SPRINGS, COLO., *June* 5, 1897.

To James Doyle, Esq., owner of the Uintah tunnel.

DEAR SIR: Having been informed that in the operation of the Uintah tunnel which commences on the west side of Battle mountain, in the Cripple Creek mining district, county of El Paso, and State of Colorado, you are trespassing on the property of, and removing ore belonging to the undersigned, the Creede & Cripple Creek Mining & Milling Company, we would respectfully demand that you allow —— —— our agents, duly authorized and appointed for that purrpose and to act in our behalf, to enter into said Uintah tunnel and make an examination, inspection, and survey thereof, for the purpose of ascertaining whether or not you are so trespassing or so removing ore.

Respectfully,

THE CREEDE & CRIPPLE CREEK MINING & MILLING CO.,
By M. KINNEY, *Secretary.*

Indorsed: No. 5122. In the district court, El Paso county, Colo. The Creede & Cripple Creek Mining & Milling Co., plaintiff, *vs.* The Uinta Tunnel, Transportation & Mining Co., defendant. Petition. Filed in the district court of El Paso county, Colorado, Jun- 15, 1897. Edgar Howbert, clerk. By E. C. Davis, deputy. Gunnell & Hamlin, attorneys for petitioner, Colorado Springs, Colo.

And thereupon, and on to wit, the 15th day of June, A. D. 1897, the same being one of the days of the regular May, A. D. 1897, term of said court, the following proceedings, *inter alia*, were had and done, to wit:

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING COMPANY, Petitioner,
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY, Respondent.

Order.

The petition in the above entitled matter having been presented pursuant to the statute in such case made and provided,
5 asking for an order for an inspection, examination, and survey of the tunnel mentioned in said petition,

It is hereby ordered that Monday, the twenty-first day of June A. D. 1897, be appointed as the time for hearing said petition, at the court house in said county.

And it is further ordered that the petitioner serve notice upon the respondent of this order at least three days prior to said twenty-first day of June, 1897.

IRA HARRIS, *Judge.*

And thereafter, and on, to wit, the 19th day of June, A. D. 1897, there was filed in the office of the clerk of said court, the following complaint, which is in words and figures as follows, to wit:

STATE OF COLORADO, } ss:
County of El Paso, }

In the District Court.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING COMPANY, Plaintiff,
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY, Defendant.

Complaint.

The above named plaintiff by Gunnell & Hamlin, and Thomas Bryant, & Lee, its attorneys, now comes and complaining of the defendant, for cause of action says:

I. That the plaintiff is a corporation organized and doing business under and by virtue of the laws of the State of Colorado, and during all the times hereinafter to be named was such corporation.

II. That by virtue of its articles of incorporation it is empowered and authorized to take, hold, own, possess, work, and develop mines and mining claims in the county of El Paso and State of Colorado, and to do such other things as are necessary or expedient in and about the general business of owning and operating gold and silver bearing mines and mining claims.

III. On information and belief, the plaintiff says that the defendant is a corporation organized under the laws of the State of Iowa; that the said defendant claims the right to do business within the State of Colorado by virtue of a compliance with the requirements of the laws of said State concerning foreign corporations, but
6 whether the said defendant has so complied, the plaintiff has not and can not obtain sufficient knowledge or information upon which to base a belief.

IV. That the plaintiff is and for more than five years last past has been, the owner in fee and in possession, except as hereinafter stated, of all those mines and mining claims situate in Cripple Creek mining district, county of El Paso, and State of Colorado, and known as the "Ocean Wave" and "Little Mary" Lode mining claims, being survey lot No. 8192, and evidenced by mineral certifi-

cate No. 338, and by patent of the United States to the plaintiff for said claims bearing date the twenty-first day of December, A. D. 1893, and recorded in the office of the clerk and recorder of deeds in and for said county, in Book 173, on page 16 of the records of said county.

V. That the said Little Mary and Ocean Wave Lode mining claims were duly located and discovered on, to wit, the second day of January, A. D. 1892, by J. B. Winchell and E. W. McNeal, and that the plaintiff's said patent to said premises relates back to the said date of discovery and location thereof, and takes effect at the said dates for all purposes given and provided by the laws of the United States and of the State of Colorado concerning mining claims.

VI. That the said Little Mary and Ocean Wave Lode mining claims are valuable only for the veins, lodes, ledges, or deposits of gold and silver ores which they and each of them contain.

VII. That on, to wit, the first day of January, A. D. 1897, the defendant by means of a tunnel driven into and underneath the said mining claims has wrongfully, unlawfully, and against the consent and without the knowledge of the plaintiff, ousted the plaintiff from the possession of so much of the said premises as has been penetrated by the said tunnel and have retained and still retain possession thereof.

VIII. That the said defendant, by means of and with the said tunnel, has entered as aforesaid into, upon and underneath the said premises, at a point about fifty feet (50 feet) south of the northwest corner of the Little Mary Lode mining claim, and has proceeded with said tunnel and ouster from said point southeasterly across the said Little Mary Lode mining claim, and into, upon and underneath and partly across the said Ocean Wave Lode mining claim, according to the best knowledge, information, and belief of the plaintiff, and threatens to, and will unless restrained by the injunction process of this court, continue the said tunnel across the said Ocean Wave Lode mining claim, and by drifts, cross-cuts, and
7 lateral workings within the said Little Mary and Ocean Wave Lode mining claims, proceed to develop, explore, work, and mine the said Little Mary and Ocean Wave veins, and extract, take away, remove, and sell the said valuable ores of the plaintiff and convert the proceeds thereof to its own use.

IX. The plaintiff further complaining, alleges:

That the said entry, trespass, and ouster of the plaintiff by the said defendant is a continuing one.

That the defendant falsely pretends and asserts the right of ownership in, and control and right to the possession of all veins lodes, and ledges within the said Little Mary and Ocean Wave Lode mining claims, denies the right of ownership and possession of the plaintiff thereto and therein notwithstanding its said patent as aforesaid, and as the plaintiff is informed and believes, has located or is about to locate or attempt to locate upon the said veins, lode mining claims of its own under the false pretense of owner-

ship thereof by right of discovery, thus involving the plaintiff in great and unnecessary expense, loss of time, and trouble in and about defending its ownership and right to the possession of the said premises and each and every part thereof, against the said wrongful and unlawful claims, pretenses and actions of the said plaintiff.

X. That the said plaintiff by virtue of the said ouster and trespass aforesaid has been damaged in a large sum of money, to wit, in the sum of two thousand five hundred dollars ($2,500.00) and that if the said defendant be permitted to continue to enter into, through, and across the said premises of the plaintiff, and to extract, mine, and take ore therefrom, or exploit the same for ore or for any purpose whatever, the plaintiff will be put to great, lasting, and irreparable loss, damage, and injury by virtue of the premises.

XI. That the said defendant is insolvent, and has no money, property or effects within the State of Colorado or elsewhere, so far as the plaintiff is informed and believes, out of which any judgment either for damages already sustained or for those which it will sustain in the event the defendant shall continue its said work and (made) good its threats and promises to take, extract, and remove ore from said premises and work in and upon the same, could be realized either in whole or in part.

Wherefore, the plaintiff prays judgment:

(1.) For the recovery of possession of the said Little Mary and Ocean Wave Lode mining claims.

(2.) For two thousand five hundred dollars ($2,500.00) damages as aforesaid.

(3.) For costs of suit.

8 And forasmuch as the plaintiff is wholly without remedy as to the matters and things hereinbefore set forth, save in a court of equity, may it please this honorable court to grant the plaintiff a temporary injunction issuing out of and under the seal of this honorable court and directed to the sheriff of the said county for service and return, commanding the said defendant, its agents, servants, attorneys, employés, and representatives, and each and every of them, wholly to desist and refrain from further working, mining, or extracting ore, or running drifts, stopes, cross-cuts, inclines, or any other work or works whatsoever within the said Little Mary and Ocean Wave Lode mining claims, the premises of the plaintiff, or any part or portion thereof, or from using the said tunnel for purposes of ingress or egress into, through, upon, across, or under the said Little Mary and Ocean Wave Lode mining claims, or either of them until the further order of this court in the premises, and that upon a final hearing of the matters and things herein set forth, the said injunction be made perpetual.

GUNNELL & HAMLIN AND
C. S. THOMAS,
Attorneys for Plaintiff.

STATE OF COLORADO, } ss:
County of El Paso, }

Personally appeared James F. Burns, who, being first duly sworn, according to law, says:

That he is president of the above named plaintiff, The Creede and Cripple Creek Mining and Milling Company; that he has read the above and foregoing complaint and that the matters and things therein stated are true according to his best knowledge, information, and belief.

JAMES F. BURNS.

Subscribed in my presence and sworn to before me this 18th day of June, A. D. 1897.

My commission expires Oct. 9, '99.

[SEAL.]

J. R. BISCHOF,
Notary Public.

Indorsed: No. 5122. In the district court, El Paso county, Colo. The Creede & Cripple Creek Mining and Milling Company, plaintiff, *vs.* The Uinta Tunnel Mining and Transportation Company, defendant. Complaint. Filed in the district court of El Paso county, Colorado, Jun- 19, 1897. Edgar Howbert, clerk. By E. K. Gaylord, deputy. Gunnell & Hamlin and Thomas, Bryant & Lee, attorneys for plaintiff, Colorado Springs, Colo.

* * * * * * *

9 And thereupon, and on, to wit, the 21st day of June, A. D. 1897, there was filed in the office of the clerk of said court the answer, which is in words and figures, as follows, to wit:

STATE OF COLORADO, } ss:
County of El Paso, }

In the District Court Sitting within and for said County.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING COMPANY, Petitioner,
vs.
THE UINTAH TUNNEL, MINING AND TRANSPORTATION COMPANY, Respondent.

Answer.

Now comes the above named respondent, and for its answer to the petition of petitioner heretofore filed herein, says: That it denies each and every allegation and averment made and contained in said petition, save and except that respondent admits that the petitioner

claims to be the owner of the "Little Mary" and "Ocean Wave" Lode *and* mining claims mentioned and described in its petition; that the pretended notice that was served upon the respondent was mailed to James Doyle, the president of the respondent, by registered letter.

For a further answer herein, respondent states, that since the service of said notice, and before the commencement of this action, M. Kinney, the secretary and one of the directors of the petitioner, and John Harnan, one of the directors of the petitioner herein, have each, at various and sundry times, been notified to make an examination and inspection of the matters and things asked for in the petition of petitioner.

SCOTT ASHTON,
Attorney for Respondent.

STATE OF COLORADO, } ss:
County of El Paso, }

Scott Ashton being by me first duly sworn on oath, deposes and says:

That he is the attorney for the respondent, and that the respondent is a foreign corporation organized under the laws of the State of Iowa, and that as the attorney and agent, affiant makes this affidavit, and states that the matters and things hereinabove set forth are true, save and except those matters therein stated on information and belief, and as to those matters affiant believes it to be true.

SCOTT ASHTON.

10 Subscribed and sworn to before me this 21st day of June, A. D. 1897.

My com. expires Oct. 20th, 1899.

[SEAL.] LOUIS W. CUNNINGHAM.

Indorsed: No. 5122. In the district court, El Paso county, Colo. The Creede & Cripple Creek Mining Co., plaintiff, *vs.* The Uinta Tunnel Mining & Transportation Co., respondent. Answer. Filed in the district court of El Paso county, Colorado, Jun- 21, 1897. Edgar Howbert, clerk. By M. L. Taylor, deputy. Scott Ashton, attorney for respondent, Victor, Colo.

* * * * * * *

Pleas before the Honorable Horace G. Lunt, one of the judges of the district court of the fourth judicial district of the State of Colorado, sitting within and for the county of El Paso, in said State, in division one thereof, at a term begun and held at the court house in the city of Colorado Springs, in the county and State aforesaid, on the 10th day of May (it being the second Monday), A. D. 1897, and of the Independence of the United States the one hundred and twentieth.

Present: Hon. Horace G. Lunt, judge aforesaid. Henry M. Blackmer, district attorney. W. S. Boynton, sheriff of said county. Edgar Howbert, clerk of said court.

Attest: EDGAR HOWBERT, *Clerk.*

And thereupon, and on, to wit, the 21st day of June, A. D. 1897, the same being one of the days of the regular May, A. D. 1897, term of said court, the following proceedings, *inter alia*, were had and done, to wit:

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING COMPANY, *Petitioner*,
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY, Respondent.

Order.

The application of the petitioner for an inspection, examination, and survey of that part of the Uinta tunnel lying within and underneath the vertical boundaries of the "Little Mary" and "Ocean Wave" Lode mining claims described in said petition, this day coming on to be heard, and the petitioner appearing by A. T. Gunnell and C. S. Thomas, its attorneys, and the respondent appearing by Scott Ashton, Esquire, its attorney, and the court having heard the said petition and the reply thereto and the affidavits in sup-
11 port of and against the same, and being fully informed in the premises, it is considered that the prayer of the said petition be granted.

Wherefore, it is ordered that the said petitioner be and it is hereby permitted to make an inspection, examination, and survey of that part of the Uinta tunnel lying within and underneath the vertical boundaries of the Little Mary and Ocean Wave Lode mining claims, with one surveyor and three witnesses, according to the statute in such case made and provided. That the said surveyor and witnesses shall be permitted to enter into the said Uinta tunnel by the said respondent, and upon ascertaining and locating the point where the said tunnel crosses the westerly line of the Little Mary Lode mining claim, they shall be permitted to begin at said point and inspect, examine, and survey the said tunnel easterly to the point where the said tunnel crosses the easterly side line of the said Ocean Wave Lode mining claim, which point shall also be determined and located by the said surveyor and Victor G. Hills, surveyor, and H. E. Hills, F. G. Willis, and F. G. Peck, witnesses selected by the said petitioner, be and are hereby appointed as the surveyor and witnesses by whom such inspection, examination, and survey shall be made.

It is further ordered that the said survey shall begin on the 23rd day of June, A. D. 1897, and may continue from day to day thereafter until the same shall be completed, and the same shall be com-

pleted within a period of ten days from the date of the commencement thereof.

It is further ordered that the engineer of the respondent company may, if the respondent so desires, accompany the said surveyor and witnesses of the said petitioner at and during the times of making said inspection, examination, and survey, and notice shall be given the respondent 12 hours before going into the tunnel on each day.

And it is further ordered that the said surveyor and witnesses shall have free access to the said tunnel during the times herein mentioned between the hours of 9 o'clock a. m. and 5 o'clock p. m. of each day, for the purpose of such inspection, examination, and survey in conformity with this order, and no interference shall be made with such person or any of them while making said inspection, examination, and survey.

Done in open court at Colorado Springs in said county and State this twenty-first day of June, A. D. 1897.

HORACE G. LUNT,
Judge of the District Court.

12 And thereafter, and on, to wit, the 6th day of July, A. D. 1897, there was filed in the office of the clerk of said court the petition for removal, which is in words and figures, as follows, to wit:

STATE OF COLORADO, } ss:
County of El Paso, }

In the District Court.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING COMPANY, Plaintiff,
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY, Defendant.

Petition for Removal.

To the honorable the district court of El Paso county, State of Colorado, and the honorable judges thereof:

Your petitioner, The Uinta Tunnel Mining and Transportation Company, respectfully shows unto this honorable court:

That it is the defendant in the above entitled cause; that the matter in dispute in said cause exceeds, exclusive of interest and costs, the sum or value of two thousand ($2,000) dollars, and that said suit is of a civil nature at common law, and that said suit is now pending and undetermined in the district court of said El Paso county, and that the time under the statute of the State of Colorado, and the practice of said court within which this defendant is required to appear and plead herein has not yet expired, nor has this defend-

ant, your petitioner, prior to the date hereof, appeared in said court nor plead to said complaint. That this is a suit between citizens of different States, in this, to wit, that the plaintiff, The Creede and Cripple Creek Mining and Milling Company, is a corporation duly organized and existing and doing business under and by virtue of the laws of the State of Colorado, and a citizen of the State of Colorado, and was such corporation and such citizen of Colorado at the time of the bringing of this action, ever since and now. That the defendant was at the time of the bringing of this action, ever since, has been, and now is, a corporation duly organized, existing, and doing business under and by virtue of the laws of the State of Iowa, and at all of said times a citizen of the State of Iowa; so that this is a suit between citizens of different States in this, to wit, between the plaintiff, a corporation and citizen of the State of Colorado, and the defendant, a corporation and citizen of the State of Iowa.

13 And your petitioner offers herewith a bond with good and sufficient surety for his entering in said circuit court of the United States on the first day of its next session at the place to which this cause is removable, to wit, Denver, Colorado, a copy of the record in said suit and for paying all costs that may be awarded by said circuit court, if said court shall hold that this suit was wrongfully or improperly removed thereto.

And your petitioner prays this honorable court to proceed no further herein except to make an order removing this cause to the circuit court of the United States sitting at Denver, Colorado, and approving said bond, and as in duty bound your petitioner will ever pray.

SCOTT ASHTON,
Attorney for Petitioner.

STATE OF COLORADO, }
County of Arapahoe, } ss:

James Doyle, of lawful age, being first duly sworn upon his oath says: That he is the president of The Uinta Tunnel Mining and Transportation Company, the defendant in the above entitled action and the petitioner herein; that he has read the above and foregoing petition for removal and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true.

JAMES DOYLE.

Subscribed and sworn to before me this 3rd day of July, A. D 1897.

My commission expires December 14, 1897.

[SEAL.] HARRY C. WATT,
Notary Public.

Indorsed: No. 5122. The Creede & Cripple Creek Mining & Milling Company, pl'ff, *vs.* The Uinta Tunnel Mining & Transportation Co., defendant. Petition for removal to U. S. circuit ct. Scott Ashton, att'y for def't. Filed in the district court of El Paso county, Colorado, Jul- 6, 1897. Edgar Howbert, clerk. By E. K. Gaylord, deputy.

And thereupon, and on, to wit, the 6th day of July, A. D. 1897 there was filed in the office of the clerk of said court, the bond on removal, which is in words and figures as follows, to wit:

14 STATE OF COLORADO, } *ss:*
County of El Paso, }

In the District Court.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING COMPANY, Plaintiff,
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY, Defendant.

Know all men by these presents, that we, the Uinta Tunnel Mining and Transportation Company, a corporation, as principal, and James Doyle and J. B. Cunningham, as sureties, are held and firmly bound unto the above named plaintiff, The Creede and Cripple Creek Mining and Milling Company, a corporation, in the penal sum of five hundred ($500) dollars, for the payment whereof well and truly to be made unto the said plaintiff, its successors and assigns, we bind ourselves, our heirs, successors, representatives and assigns jointly and severally firmly by these presents.

Yet upon these conditions, that whereas, said The Uinta Tunnel Mining and Transportation Company, the defendant in the above entitled action, has petitioned the district court of El Paso county, State of Colorado, for the removal of a certain cause therein pending wherein the above named The Cre-de and Cripple Creek Mining and Milling Company is plaintiff, and the said The Uinta Tunnel Mining and Transportation Company is defendant, from said district court of El Paso county, Colorado, to the circuit court of the United States in and for the district of Colorado, now, if the said petitioner, The Uinta Tunnel Mining and Transportation Company shall enter in the said circuit court of the United States on the first day of its next session at the place to which said cause is removable, a copy of the records in said suit, and shall well and truly pay all costs that may be awarded by said circuit court of the United States, if said court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation to be void, otherwise to remain in full force and effect.

Witness our hands and seals this — day of July, A. D. 1897.

THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY,
By JAMES DOYLE, *Its President.*
J. B. CUNNINGHAM,
JAMES DOYLE.

15 STATE OF COLORADO, } ss:
County of El Paso, }

We, James Doyle and J. B. Cunningham, whose names are subscribed to the above bond, being first duly sworn, each for himself says; that he is a resident and freeholder within said county; that he is worth the sum specified in said undertaking as the penalty thereof, over and above his just debts and liabilities in property not exempt by law from execution.

JAMES DOYLE.
J. B. CUNNINGHAM.

Subscribed and sworn to before me this 3rd day of July, A. D. 1897.

My commission expires Dec. 4, 1899.

[SEAL.] J. ELMER PARKISON,
Notary Public.

Indorsed: No. 5122. The Creede & Cripple Creek Mining & Milling Co., pl'ff, *vs.* The Uinta Tunnel Mining and Transportation Co. def't. Bond for costs. Approved the within bond this 6th day of July, 1897. Ira Harris, judge. Scott Ashton, att'y for def't. Filed in the district court of El Paso county, Colorado. Edgar Howbert, clerk. By E. K. Gaylord, deputy.

Pleas before Honorable Ira Harris, one of the judges of the district court of the fourth judicial district of the State of Colorado, sitting within and for El Paso county, in said State, in division two thereof, at a term begun and held at the court house in the city of Colorado Springs, in the county and State aforesaid, on the 10th day of May (it being the second Monday) A. D. 1897, and of the Independence of the United States, the one hundred and twenty-first.

Present: Hon. Ira Harris, judge aforesaid. Henry M. Blackmer, district attorney. W. S. Boynton, sheriff of said county. Edgar Howbert, clerk of said court.

Attest: EDGAR HOWBERT, *Clerk.*

Be it remembered, that heretofore and on to wit, the 6th day of July, A. D. 1897, the same being one of the days of the regular May, A. D. 1897 term of said court, the following proceedings, *inter alia*, were had and done, to wit:

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING COMPANY, Petitioner,
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY, Respondent.

At this day in open court comes the defendant by its attorney, Scott Ashton, Esquire, and the said defendant having
16 heretofore presented and filed its petition for the removal of said cause to the circuit court of the United States for the district of Colorado, and having also on the same day filed its bond for such removal, and the court having considered the same,

It is ordered by the court that the said petition and bond be and they are hereby approved; and that this action be, and the same hereby is removed to the said circuit court: and let the clerk of this court make a transcript of the papers in this behalf, together with all orders had and entered of record herein, and certify the same to said circuit court of the United States for the district of Colorado with all convenient speed upon the payment of all costs remaining due in this action.

And thereupon, and on, to wit, the 16th day of July A. D. 1897, there was filed in the office of the clerk of said court the summons which is in words and figures as follows, to wit:

STATE OF COLORADO, } *ss:*
County of El Paso, }

In the District Court.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING COMPANY, Plaintiff,
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY, Defendant.

Summons.

The People of the State of Colorado to The Uinta Tunnel Mining and Transportation Company, the defendant above named, Greeting:

You are hereby required to appear in an action brought against you by the above named plaintiff in the district court of El Paso county, State of Colorado, and answer the complaint therein within twenty days after the service hereof, if served within this county, or if served out of this county, or by publication, within thirty days after the service hereof, exclusive of the day of service; or judgment by defalt will be taken against you according to the prayer of the complainant, and if a copy of the complaint in the above entitled

action be not served with this summons, or if the service hereof be made out of this State, then ten days additional to the time hereinabove specified for appearance and answer will be allowed before the taking of judgment by default as aforesaid.

17 The said action is brought by the plaintiff to obtain judgment against you for the recovery of possession of the Little Mary and Ocean Wave Lode mining claims, situate in the Cripple Creek mining district, El Paso county, State of Colorado, for two thousand five hundred dollars damages alleged to have been sustained by reason of a certain ouster and trespass; for costs of suit; and that a temporary writ of injunction issue against you commanding you, your agents, servants, attorneys, employees, and representatives, and each and every of them, wholly to desist from further working, mining, or extracting ore, or running drifts, stopes, crosscuts, inclines, or any other work or works whatsoever within the said Little Mary and Ocean Wave Lode mining claims, the premises of the plaintiff, or any part or portion thereof, or from using a certain tunnel driven under said Little Mary and Ocean Wave lodes, for the purpose of ingress and egress into, through, upon, across, or under the said Little Mary and Ocean Wave Lode mining claims or either of them until the further order of this court in the premises, and that upon a final hearing of the matters and things herein set forth, the said injunction be made perpetual, as will more fully appear from the complaint in said action to which reference is here made; copy of which is hereto attached.

And you are hereby notified that if you fail to appear and to answer the said complaint as above required, the said plaintiff will apply to the court for the relief herein demanded.

Given under my hand and the seal of said court, at Colorado Springs, in said county, this 19th day of June, A. D. 1897.

EDGAR HOWBERT, *Clerk*,
[SEAL.] By M. L. TAYLOR, *Deputy*.

STATE OF COLORADO, }
County of El Paso, } *ss*:

I do hereby certify that I have duly served the within summons together with a copy of the complaint in the within stated action, on this 28th day of June, A. D. 1897, by delivering to and leaving with James Doyle, president of The Uinta Tunnel Mining and Transportation Company, the said defendant personally in the county of El Paso, a copy of the said summons, together with a copy of the complaint in the action therein mentioned, thereto attached.

W. S. BOYNTON, *Sheriff*,
By F. E. BOYNTON, *Deputy*.

18 Indorsed: (Original.) No. 5122. Summons. In district court, El Paso county. The Creede & Cripple Creek Mining and Milling Co., plaintiff *vs.* The Uinta Tunnel Mining & Transpor-

tation Co., defendant. State of Colorado, county of El Paso. Office of the sheriff of said county, June 21st, A. D. 1897. I hereby certify that I received the within summons on the 21st day of June, 1897, at 11:20 o'clock a. m. W. S. Boynton, sheriff. By R. C. Bradfield, deputy. Filed in the district court of El Paso county, Colorado, Jul. 16, 1897. Edgar Howbert, clerk. By E. C. Davis, deputy. Sheriff's fees, service, .50, mileage & ex. 5.00. Total, 5.50. Gunnell & Hamlin, & Thomas, Bryant, and Lee, attorneys for plaintiff.

I, Edgar Howbert, clerk of the district court of the fourth judicial district of the State of Colorado, within and for El Paso county, do hereby certify the above and foregoing to be a true, perfect, and complete copy of all papers on file and all orders had and entered of record in a certain cause lately pending in said court on the civil side thereof, wherein The Creede and Cripple Creek Mining and Milling Company was petitioner, and The Uinta Tunnel Mining and Transportation Company was respondent, as the same appear on file and of record in this office remaining.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at Colorado Springs, this 30th day of July, A. D. 1897.

[Seal District Court, El Paso County.]

EDGAR HOWBERT, *Clerk*,
By E. C. DAVIS, *Deputy*.

Indorsed: 3658. U. S. circuit court. The Creede & Cripple Creek Mining & Milling Company *vs.* Uintah Tunnel Mining & (&) Transportation Company. Transcript from dist. court, El Paso county. Filed Nov. 1, 1897. Robert Bailey, clerk.

70th Day, Tuesday, February 8th, A. D. 1898.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the 2d day of November last past.

THE CREEDE AND CRIPPLE CREEK MINING and Milling Company *vs.* THE UINTAH TUNNEL MINING AND TRANSportation Company.	3658.	In Chancery.

Bill for Inspection and Survey and for Injunction.

At this day comes the complainant, by W. H. Bryant, Esquire, its solicitor, and thereupon on its motion, it is ordered by the
19 court that the respondent plead, answer, or demur to the bill of complaint herein as it shall be advised within thirty (30) days from this day.

Eightieth Day, November Term, Saturday March 12th, A. D. 1898.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the second day of November last past.

THE CREEDE AND CRIPPLE CREEK MINING and Milling Company
vs.
THE UINTA TUNNEL MINING AND TRANSPORtation Company. } 3658. In Chancery.

Bill for Inspection and Survey and for Injunction.

At this day comes the complainant by C. S. Thomas, Esquire, its solicitor, and the respondent by Chas. J. Hughes, Jr., Esquire, its solicitor, also comes.

And thereupon, on motion of Chas. J. Hughes, Jr., Esquire, solicitor for the respondent,

It is ordered by the court, that the hearing on the application of the complainant for an injunction herein, be and the same is hereby continued to the 21st instant.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss.:*

In the Circuit Court of the United States for the District of Colorado.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING COMPANY, Plaintiff,
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY, Defendant.

Motion.

Now at this day comes the defendant in the above entitled action and moves this honorable court for an order requiring the plaintiff herein to separate and separately plead and state its alleged and pretended causes of action at law from its alleged and pretended causes of action in equity, and to plead and state in separate pleadings, the alleged causes of action at law, and for which he demands legal relief, and his alleged suit in equity, and for which he demands equitable relief, and to file one of the said pleadings on the law side of this court, and the other of said pleadings on the chancery side of this court. and for grounds of this motion, this defendant shows unto this honorable court.

That said action was commenced by the filing of a complaint in the district court of El Paso county, which said complaint stated legal and equitable causes of action, and claimed and demanded legal and equitable relief, that the same has been properly removed into this honorable court, and that said plaintiff has not repleaded or separately stated said legal and equitable alleged causes of action.

CHAS. J. HUGHES, JR., AND
SCOTT ASHTON,
Attorneys for Defendants.

Indorsed: No. 3658. In circuit court. The Creede and Cripple Creek M. M. Co. *vs.* The Uinta Tunnel Mining and Transportation Company. Motion to separate and separately plead. Filed Mar. 14, 1898. Robert Bailey, clerk. Chas. J. Hughes, Jr. and Scott Ashton, atty's for defendants.

Ninety-second Day, November Term, Friday, April 1st, A. D. 1898

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the 2d day of November, 1897.

THE CREEDE AND CRIPPLE CREEK MINING and Milling Company
vs.
THE UINTA TUNNEL MINING AND TRANSPORTation Company. } 3658 In Chancery.

Bill for Inspection and Surveg and for Injunction.

This cause having heretofore and at this term come on to be heard on the motion of the complainant for a temporary injunction was argued by counsel, C. S. Thomas, Esquire, appearing for the complainant, and C. J. Hughes, Jr., Esquire, appearing for the respondent, and by the court taken under advisement, and the court having considered the matter and being now fully advised in the premises:

It is ordered by the court for good and sufficient reasons to the court appearing that the said motion be and the same is hereby denied.

21 UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING COMpany, Complainant,
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY, Defendant.

Answer.

This defendant now and at all times hereafter, saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering, saith:

This defendant admits that the complainant, The Creede and Cripple Creek Mining and Milling Company, is a corporation organized and existing under the laws of the State of Colorado, as this defendant is informed and believes, in compliance with and by virtue of the requirements of the laws of the State of Colorado, as stated in said complaint.

Defendant further answering says: That it admits that by virtue of said articles of incorporation complainant is authorized to take hold, own, possess, work, and develop mines and mining claims in the county of El Paso, State of Colorado, and do such other things as are necessary or expedient in or about the general business of owning and operating silver bearing mines and mining claims.

Defendant further answering says, that it admits that it is a corporation organized under the laws of the State of Iowa, and doing business in the State of Colorado by virtue of full compliance with the requirements of the laws of the State of Colorado concerning foreign corporations.

Defendant further answering denies, that the complainant is now or ever was the owner in fee simple of the pretended Ocean Wave and Little Mary Lode mining claims, but admits upon information and belief that the said complainant has by some means obtained an alleged patent for the said Ocean Wave and Little Mary Lode mining claims which said patent the defendant alleges is and should be wholly null and void, because the same was not
22 obtained or issued in pursuance of the statutes of the United States therein and providing for the issuance thereof.

And defendant further alleges that said Ocean Wave and Little Mary Lode mining claims or each thereof were not located upon discovery veins at all, and that no vein whatever was ever uncovered or discovered in the discovery shaft of said Ocean Wave lode or of the said Little Mary lode.

Defendant further answering denies, that the complainant is now or for more than the five years last past or at any other time has been the owner of and in the possession or entitled to the possession of the premises claimed as the Ocean Wave and Little Mary Lode mining claims, situate in the Cripple Creek mining district, county of El Paso, State of Colorado.

Defendant further answering denies, that the said Ocean Wave and Little Mary Lode mining claims were duly located and discovered or located or discovered on, to wit, the second day of January, A. D. 1892, or at any other time, by J. B. Winchell or E. W. McNeal

or any other person, and that there never was any location whatever made of said pretended Ocean Wave and Little Mary Lode mining claims.

Defendant further denies that by means of a tunnel driven into and underneath said Ocean Wave and Little Mary Lode mining claims this defendant has wrongfully and unlawfully or wrongfully or unlawfully ousted complainant from the possession of so much of the said premises as has been penetrated by said tunnel; and further denies that such penetration by said tunnel as stated in complainant's complaint was made against the consent and without the knowledge of the complainant, but on the contrary this defendant alleges the fact to be that the officers of the Creede and Cripple Creek Mining and Milling Company and particularly the directors thereof and those in the possession, control, and management of the workings of said pretended Ocean Wave and Little Mary Lode mining claims, for more than a year prior to the commencement of the action herein have had full knowledge of the driving of the tunnel of the defendant into, through, and across said pretended Ocean Wave and Little Mary Lode mining claims, and that the same was so driven into, through, and across said pretended Ocean Wave and Little Mary Lode mining claims with the knowledge and consent of complainant, and with the knowledge and consent of those in the possession of said pretended Ocean Wave and Little Mary Lode mining claims in the working and developing thereof, and defendant further says that after said tunnel had been driven into, through, and across said pretended Ocean Wave and Little
23 Mary Lode mining claims, James F. Burns, John Harnan, and others, who are now directors and large stockholders of complainant, and were directors and large stockholders of the Portland Gold Mining and Milling Company, purchased a large portion and a control of the capital stock of the complainant, and that they purchased said stock after said tunnel had been driven into, through, and across said pretended Ocean Wave and Little Mary Lode mining claims by and with the consent of the officers and directors thereof as above stated, for the purpose and with the intent to annoy and harrass this defendant by suits and litigation, and to impede the progress of the tunnel owned by this defendant, and for the purpose of defeating if possible, the rights of defendant and said tunnel. And with the intent and purpose to delay, hinder, annoy, and harrass this defendant; and defendant charges that the parties who own the majority of the stock and control of complainant and are now directors of complainant and were such directors at the time of the institution of said suit purchased said stock and became such directors after defendant had penetrated said pretended Ocean Wave and Little Mary Lode mining claims with its tunnel, and for the purpose and sole purpose to commence this suit as is hereinbefore stated.

Defendant further answering denies; that it, by means of and with the said tunnel, has entered the aforesaid premises for the purpose stated in the eighth paragraph of complainant's complaint, and

denies that it threatened to or will unless restrained by the injunctive process of this court, cross-cut the workings of said pretended Ocean Wave and Little Mary Lode mining claims, and proceed by driving, cross-cutting, or other means, to work said pretended Ocean Wave and Little Mary Lode mining claims; and extract, take away, remove, or sell valuable ores of the complainant, and convert the proceeds thereof to its own use, but on the contrary defendant states that its tunnel had been driven into said pretended Ocean Wave and Little Mary Lode mining claims long before the commencement of the above entitled action, and that no veins of ore have ever been discovered and uncovered, or discovered or uncovered by the driving of the bore of said tunnel into, through and across and along said pretended Ocean Wave and Little Mary Lode mining claims.

Defendant further answering denies that it ever broke down, attempted to break down, or threatened to break down or remove or sell any valuable ores at all from said pretended Ocean Wave and Little Mary Lode mining claims, and denies that the alleged entry, trespass, or ouster of the complainant by the defendant as set forth in complainant's complaint is a continuing one, and alleges that there was no ouster at all.

24 Defendant further answering denies that it falsely pretends to assert the rights of ownership in, control, and right to the possession of all lodes, ledges and veins within said pretended Ocean Wave and Little Mary Lode mining claims as is alleged in complainant's complaint, but on the contrary alleges, that it had the right to run and operate its said tunnel, as is hereinafter more fully set forth.

Defendant further answering denies that it has located or ever located upon any vein, lode, or mining claim within the vertical side lines of said pretended Ocean Wave and Little Mary Lode mining claims, or that it located any veins within the surface boundaries of said pretended lode mining claims whatever.

Defendant further answering denies that by any act of it, it has attempted to or will involve complainant in any great and unnecessary expense or loss of time, and trouble, as alleged and set forth in complainant's complaint, and defendant further denies that any act of it has or will cause the complainant loss of time or trouble in and about defending complainant's pretended ownership or pretended right to possession of the said premises, and defendant further denies that any act on its part in and about said premises has been unlawful and wrongful or unlawful or wrongful.

Defendant further answering denies that complainant by virtue of the said pretended ouster or trespass has been damaged in the sum of twenty-five hundred dollars ($2500) or in any other sum whatever.

Defendant further answering denies that complainant by reason of any act on its part as set forth in complainant's complaint would be put to great, lasting, or irreparable loss, damage, or injury or be put to any loss, damage, or injury whatever.

Defendant further answering denies that it is insolvent, and has

no property, money, or effects within the State of Colorado or elsewhere, out of which to satisfy any judgment for damages already alleged to have been sustained, or for those damages that complainant alleges may be sustained in the future as set forth in complainant's complaint, but on the contrary this defendant alleges and avers that it is wholly solvent and able to respond to any damages that complainant may be able to obtain or recover from defendant in any action that complainant may bring against defendant.

Defendant further answering denies that the pretended discovery and location or discovery or location of the said pretended
25 Ocean Wave and Little Mary Lode mining claims, was made before the commencement of said Uinta tunnel.

Defendant further answering says that the patent of the United States issued for said Ocean Wave and Little Mary Lode mining claims was issued subject to the acts of Congress in reference to tunnel rights and that the defendant, The Uinta Tunnel Mining and Transportation Company and its grantors had, by reason of the location of said Uinta tunnel, the right of, in, and to, any and all lodes, veins, and mining claims that it might cut or intersect in the driving of said tunnel, as is guaranteed the locators of said tunnel in and by virtue of sec. 2323 of the Rev. Stat. of the United States, and defendant further alleges that the pretended discovery alleged and pretended to have been made in and upon said pretended Ocean Wave and Little Mary Lode mining claims, and by virtue of which it claimed the right to patent the same under the laws of the United States was not made until long after the location of said Uinta tunnel, and at a time when said locators thereof were well advised and knew that said tunnel had been located, and had been and was being prosecuted with due diligence and in strict compliance with the terms and conditions of the statutes of the United States therein, providing for the location and prosecution of such tunnel and defining and determining the rights pertaining thereto, and that said pretended Ocean Wave and Little Mary Lode mining claims, so far as the same may now be claimed by said complainant, was taken and are held subject to the rights of this defendant as the owner of said Uinta tunnel, located in accordance with sec. 2323, Rev. St. of the U. S. and also subject to the rights of this defendant to cross said claim and to drive drifts therein.

Defendant further answering denies that complainant is entitled to the relief prayed for in and by the prayer of its bill of complaint or any thereof, or any whatever.

Defendant further answering by way of further answer and affirmative defense to the plaintiff's said bill of complaint, and the matters and things therein alleged and set up, respectfully alleges:

First. That the defendant, The Uinta Tunnel Mining and Transportation Company, is a corporation organized and existing under and by virtue of the laws of the State of Iowa, and doing business in the State of Colorado, by virtue of a full compliance with the requirements of the laws of the State of Colorado concerning
26 foreign corporations, and that the same was organized for the

purpose among other things of owning, operating, and developing lodes and lode mining claims in the county of El Paso, and State of Colorado, and that it now is and during all the times hereinafter mentioned was the owner by itself and its grantors, and in the possession of the Uinta tunnel, and the tunnel site location, and of all rights and privileges thereunto belonging and appertaining.

Second. That the said Uinta tunnel and tunnel site location was made under and in full compliance with the provisions of section 2323 of the Revised Statutes of the United States, and the rules and regulations adopted by the Interior Department of the United States thereunder, and was located on, to wit, the 13th day of January, A. D. 1892, as will more fully appear from the location certificate thereof as more fully appears in and by the records of the county of El Paso where the same duty is duly and at length recorded in Book 79 at page 492 of the records of said county, that this defendant acquired the said Uinta tunnel and tunnel site location, with all the rights, properties and possessions thereunto appertaining or belonging on or about the 16th day of May, A. D. 1896, and this defendant alleges that prior to the acquisition by it of the title thereof work had been diligently prosecuted upon said tunnel from the time of its location up to the time of the purchase thereof by this defendant; that the same was prosecuted in full compliance with the provisions of section 2323 of the Revised Statutes of the United States; that at no time was the work abandoned, neglected, or discontinued for any consecutive period of six months; but on the contrary the same was prosecuted with due diligence at all times prior to the purchase thereof by said defendant, and that from the time of the purchase thereof by said defendant hitherto, the defendant has prosecuted the work therein and thereon with great diligence for the purpose of boring said tunnel, and also for the discovery of veins therein, and in the manner and to the extent provided for under and by virtue of said section 2323 of the Revised Statutes of the United States, and that at no time since this defendant has been the owner thereof has work thereon *has* been discontinued for a period of six consecutive months. And this defendant further alleges that this defendant and its grantors have expended in and upon said tunnel the sum of more than $125,000, and in addition to the said expenditures have also expended upon surface work, improvements, and expenses, a further sum of not less than 10,000.

Third. Defendant further answering alleges that its work and the work of said grantors in and upon the said tunnel has been
27 open and without concealment and that the same has been at all times prosecuted under the claim of the said defendant and its grantors of the right so to do by virtue of the location of said tunnel and tunnel site location under and by virtue of the laws of the United States and under the terms and provisions of section 2323 of the Revised Statutes of the United States, and that the expenditures thereof and the developments made thereon have been made in com-

pliance with the terms and provisions of and in reliance upon the said statutes. And this defendant further alleges upon information and belief that the said location at the time of its location, was designated upon the ground by a line run through the trees and undergrowth upon the side of the mountain and by stakes at regular intervals along the said line duly marked with the name of the tunnel, so that the same could be easily and fully designated along and upon the ground and surface thereof, and that the same had been so marked continuously by stakes at regular intervals along the line of said tunnel since the defendant The Uinta Tunnel Mining and Transportation Company has been the owner thereof so that the same could be easily and fully designated upon and along the surface of said ground, and that this defendant and its grantors have at all times since the location of said tunnel hitherto claimed the right to own, extend, operate and develop the said tunnel as a tunnel location under the terms and provisions and for the purposes designated in and by section 2323 of the Revised Statutes of the United States.

Fourth. Defendant further answering alleges and avers; that said Uinta tunnel entered the westerly side lines of the pretended Little Mary lode at a point distant from the mouth or portal of the said tunnel about 550 feet at a time which was more than one year prior to the commencement of the above entitled action; and that said tunnel was driven through the said pretended Little Mary lode with great diligence and was driven on its course through the side lines of the said pretended Ocean Wave lode, and when the said tunnel had been driven through the said pretended Ocean Wave and Little Mary Lode mining claims, it was distant from the mouth or portal thereof about 1175 feet; and that in running said tunnel through said prefended Ocean Wave and Little Mary lodes defendant drove the same a distance of about 625 feet; and that the same was driven through the said pretended Ocean Wave and Little Mary lodes with the full knowledge and consent of complainant and at great cost and expense as above set forth, and was so driven through said pretended lodes more than a year prior to the commencement of the above entitled action without any protest or objection made by complainant, its officers or employees, or agents; and that
28 the driving of said tunnel was acquiesced in by the complainant, its officers, servants, and employees, and that after driving said tunnel through and across said pretended Ocean Wave and Little Mary lodes defendant continued the prosecution of its said tunnel and drove the same to a distance of about 2200 feet and until it reached and penetrated the territory that is claimed by the Portland Gold Mining Company, and it was after said tunnel had reached said distance that complainant instituted the above entitled action, and the same was then instituted by complainant because, for the reason and on account of the matters and things herein recited and set forth.

Fifth. Defendant further answering alleges and avers that at a point distant from the mouth or portal of said tunnel and in and

upon the line thereof about 1931 feet, and upon the ground embraced within the surface boundaries of the location of said tunnel and within the location of the bore thereof, and which location of said tunnel was made long prior to any location upon said territory by any other person or persons, in driving its said tunnel defendant discovered, uncovered, and disclosed a vein and lode in rock in place bearing gold, silver, and other precious metals which said vein entered said tunnel and was parallel to the line of said tunnel for a distance of more than 500 feet, and is still within said tunnel and within the breast thereof, and that the same is now on the line and bore thereof near the south line of said tunnel, and that the said tunnel is at present driven into the mountain for a distance slightly exceeding 2200 feet, and is through and beyond the easterly side line of the said pretendedc Oean Wave lode about 1100 feet; and defendant further alleges that the said vein is intersected, uncovered, and discovered in said tunnel as above set forth, and is described as the Uinta Tunnel No. 23 lode, and is a cross lode to any lode uncovered and discovered in said territory by any person or persons, and that the same was never uncovered or discovered by any person or persons until the same was discovered and cut as aforesaid by the said Uinta tunnel.

Sixth. Defendant further answering alleges that in driving said tunnel it has followed said cross lode by it discovered as aforesaid upon territory which was segregated and marked and upon ground appropriated by said tunnel location prior to any other location thereof, as it had full right and authority so to do in and by virtue of section 2336 Revised Statutes of the United States, and defendant located said cross lode by calling it the Uinta Tunnel No. 23 lode and mining claim and by placing at the mouth of said tunnel in a conspicuous place a location certificate showing the general
29 course of said lode and number of feet claimed on each side of the discovery thereof together with a description thereof showing date of discovery, date of location, and number of feet claimed as aforesaid, and name of the locator thereof to wit, the Uinta Tunnel Mining and Transportation Company, and afterward caused a location certificate thereof to be filed in the office of the clerk & recorder of El Paso county, Colorado, Book 278 at p. — records of the office of said clerk and recorder, and claimed as the location thereof from point of discovery, running 1200 feet southerly and 300 feet northerly from the point of discovery; and that said cross lode is at the present time disclosed and uncovered and appears in the breast of the said tunnel running almost parallel with the course of said tunnel and that under and by virtue of the Revised Statutes of the United States hereinabove referred to and in, under, and by virtue of the terms of sections 2323 and 2336 thereof, this defendant has the right to own, possess, and enjoy said cross lode so by it uncovered and discovered as aforesaid, and to mine, extract, remove, and sell the ores therefrom, and that the said vein so uncovered and disclosed as aforesaid and now appearing at the breast of said tunnel is a well defined gold and silver bearing lode or vein in rock in

place between walls and is valuable for mining and the minerals therein contained.

Seventh. Defendant further answering alleges that the said cross lode by it discovered as aforesaid was never uncovered, disclosed, or discovered by complainant in any workings upon said pretended Ocean Wave and Little Mary lodes, whether done by said complainant or any other person or persons whomsoever.

Eighth. Defendant further alleges and avers that it has and claims the right to own, possess, and operate said lode as of the date, or by virtue of said location of said Uinta tunnel, to wit, of the said 13th day of January, A. D. 1892, as was set forth and claimed in and by virtue of said location certificate thereof, herinbefore described, and by virtue of said notice posted at the mouth of said Uinta tunnel, as hereinabove alleged.

Ninth. Defendant further answering alleges and avers, that the said vein so uncovered and disclosed as aforesaid does not outcrop or appear at the surface nor was the same known to exist at the time of the location of said Uinta tunnel or until the same was discovered by this defendant as it was discovered by it on or about the 18th day of December, A. D. 1897.

Tenth. Defendant further answering alleges and avers that under and by virtue of said discovery it has the right to mine, extract, and sell the ores and minerals therefrom, and has the right to mine and extract and sell ores and minerals from said vein, over, through, and along said tunnel as the said tunnel entered into along, and across said pretended Ocean Wave and Little Mary lodes, and the defendant claims the right to use the bore of said tunnel by reason of the facts aforesaid as it penetrates said Little Mary lode and across the same as hereinabove stated, and as the said tunnel likewise penetrates through and across the said pretended Ocean Wave lode as hereinabove stated; and that the complainant by permitting and allowing this defendant to expend more than the sum of one hundred and thirty-five thousand dollars ($135,000) as aforesaid in reaching, uncovering, and discovering said ore body, has no standing in a court of equity at this time to interfere with defendant in operating its tunnel over, through, and along said pretended Ocean Wave and Little Mary Lode mining claims, but on the contrary, complainant by its conduct and actions in the premises, as herein recited and set forth, has permitted and allowed defendant to expend said large sum of money and has permitted and allowed defendant so to proceed with said tunnel through and across said pretended Ocean Wave and Little Mary lodes, until the same has ripened into such a license and permission to so cross said pretended Ocean Wave and Little Mary lodes, that defendant can not now be disturbed in its use of said tunnel either at law or in equity.

Eleventh. Defendant further answering alleges that at a point distant from the mouth or portal of said tunnel and in and upon the line thereof about 2102 feet, and upon the ground embraced within the surface boundaries of the location of said Uinta Tunnel

location and within the bore thereof, and which location of said tunnel was made long prior to any location made upon said territory by any other person or persons whatever, in driving said tunnel it discovered, uncovered, and disclosed a vein and lode in rock in place bearing gold and silver and other precious metals, on, to wit, the 23rd day of December, A. D. 1897, which said vein was cut crossed, intersected, and penetrated by said tunnel, and said vein so discovered as aforesaid had been segregated from the public domain of the United States, and located and appropriated by said location of said Uinta tunnel and tunnel site and is upon ground that was appropriated by said Uinta Tunnel location long prior to any other location, or attempted or pretended location thereof, and that this defendant located the said vein by calling the same the Uinta Tunnel No. 24, (*loe*) and placed and erected at the mouth of said tunnel in a conspicuous place a location certificate or notice thereof, setting forth and showing the general course of said lode, the number
31 of feet claimed on each side of the said discovery thereof together with a description thereof showing date of discovery, date of location and number of feet claimed as aforesaid, the name of the locator thereof, to wit, the Uinta Tunnel Mining and Transportation Company, and afterwards caused the location certificate thereof to be filed in the office of the clerk and recorder of El Paso county, Colorado, in Book 278 at page — among the records in the office of said clerk and recorder, and claimed by the location thereof from the point of discovery thereof running northerly 750 feet and southerly 750 feet; and defendant further alleges that said discovery of said Uinta Tunnel No. 24 lode was made on, to wit, the 23rd day of December, A. D. 1897, in full conformity with the laws of the United States and the State of Colorado in reference to such locations, a location certificate thereof being made in duplicate, one of which said certificates was posted in a conspicuous place near the mouth of said tunnel and the other recorded in the office of the clerk and recorder of El Paso county, Colorado as aforesaid on, to wit, the 2nd day of March, A. D. 1898, and defendant further alleges, that the said Uinta Tunnel No. 24 lode and the vein therein discovered as aforesaid, does not outcrop, apex, or appear at the surface of the ground at any point whatever; this defendant further alleges and avers, that it has claimed and has the right to own, possess, operate, and enjoy the said lode as of the date and by virtue of the location of said Uinta Tunnel No. 24 lode, to wit, on the said date of the 13th day of January, A. D. 1892 and so sets forth and claims in and by virtue of the said location certificate thereof, hereinbefore described, and by virtue of the said notice posted at the mouth of the said Uinta Tunnel No. 24 lode, as hereinbefore alleged.

This defendant further alleges that under and by virtue of the said discovery, it has the right to mine, extract, and sell the ores and minerals therefrom, and has the right to mine, extract, and sell the ores and minerals from said veins, and has the right to remove said ores and minerals by it mined and extracted, through, and along said tunnel where said tunnel enters said pretended Little

Mary lode and across said pretended Little Mary lode as well as along and across said pretended Ocean Wave lode; and the defendant claims the right to use the bore of said tunnel, through and across said pretended Ocean Wave and Little Mary Lode mining claims by reason of the facts aforesaid; and that complainant by permitting and allowing this defendant to expend more than the sum of one hundred and thirty-five thousand dollars ($135,000) as aforesaid in reaching, uncovering, and discovering said ore
32 body, has no standing in a court of equity at this time to interfere with defendant in operating its tunnel over, through, and along said pretended Ocean Wave and Little Mary lodes and mining claims, but on the contrary complainant by its conduct and actions in the premises, as hereinabove recited and set forth, has permitted and allowed defendant to expend said large sum of money, to wit, the sum of one hundred and thirty-five thousand dollars, and has permitted and allowed defendant to so proceed with said tunnel, through and across the said pretended Ocean Wave and Little Mary lodes and mining claims, until the same has ripened into such a license and permission as entitled the defendant to use its said tunnel as it penetrates the said pretended Ocean Wave and Little Mary lodes; and that said license and permission is such that the defendant can not be disturbed therein, either at law or in equity.

Twelfth. Defendant further alleges that at a point in said tunnel distant from the mouth or portal thereof about 2118 feet and upon ground embraced within the surface boundaries of said Uinta tunnel and within the bore thereof, which location of said tunnel was prior to any other location made on said territory aforesaid defendant in driving and prosecuting said tunnel uncovered and discovered on, to wit, the 6th day of January A. D. 1898, a well defined lode or vein in rock in place carrying gold, silver, and other precious metals, which said vein was cut, crossed, intersected, and penetrated by the said tunnel, and said vein so discovered as aforesaid had been segregated from the public domain of the United States and located and appropriated by the Uinta tunnel location long prior to any other location, or attempted or pretended location thereof, and that this defendant located the said vein by calling the same the Uinta Tunnel No. 25 lode, and placed and erected at the mouth of said tunnel in a conspicuous place a location certificate or notice thereof setting forth and showing the general course of said lode, the number of feet claimed on each side of said discovery thereof, together with a description thereof showing date of discovery, date of location and number of feet claimed as aforesaid, the name of the locator, to wit, the Uinta Tunnel Mining and Transportation Company, and afterwards caused a location certificate thereof to be filed in the office of the clerk and recorder of El Paso county, Colorado, in Book 278 at page — among the records in the office of said clerk and recorder, and claimed by the location thereof from the point of discovery thereof, running 750 feet in a northerly direction and 750 feet in a southerly direction, and defendant further al-

leges that said discovery of the said Uinta Tunnel No. 25 lode was had and made on, to wit, the 6th day of January A. D.
33 1897, in full conformity with the laws of the United States and the State of Colorado in reference to such locations; a location certificate thereof being made in duplicate, one of which said certificates was posted in a conspicuous place at the mouth of the said tunnel as aforesaid, and the other thereof recorded in the office of the clerk and recorder of El Paso county, Colorado, as aforesaid, on, to wit, the 2nd day of March, A. D. 1898, that the Uinta Tunnel No. 25 lode and vein thereof as aforesaid does not outcrop, apex, or appear at the surface or at any other point whatever; and that under and by virtue of the said discovery this defendant has the right to mine, extract, remove, and sell the ores and minerals therefrom, and that said vein uncovered and discovered as aforesaid and known as and called the Uinta Tunnel No. 25 lode is a well defined vein between two walls in rock in place and carrying gold, silver, and other precious metals; and that said lode was never uncovered or discovered by any other person or persons whomsoever; and this defendant alleges that it has claimed and has the right to own, possess, operate, and enjoy said lode as of the date and by virtue of the location of the said Uinta tunnel, to wit, the said date of the 13th day of January, A. D. 1892, and so sets forth and claims in and by virtue of the said location certificate thereof, hereinbefore described, and by virtue of the said notice posted at the mouth of the said Uinta tunnel as hereinbefore alleged; and has the right to remove said ores and minerals, by it mined and extracted from said Uinta Tunnel No. 25 lode, through and along the said tunnel where said tunnel enters the said pretended Little Mary lode, and acros said pretended Little Mary lode as well as along and across said pretended Ocean Wave lode; and this defendant claims the right to use the bore of said tunnel, through and across said pretended Ocean Wave and Little Mary claims by reason of the facts aforesaid and that complainant by permitting and allowing this defendant to expend more than the sum of one hundred and thirty-five thousand dollars ($135,000) as aforesaid, in reaching, uncovering and discovering said ore body, has no standing in a court of equity at this time nor right to interfere with this defendant in operating its tunnel over, through, and along the said pretended Ocean Wave and Little Mary Lode mining claims, but on the contrary complainant by its conduct and actions in the premises, hereinabove recited and set forth, has permitted and allowed defendant to expend a large sum of money, to wit, the sum of more than one hundred and thirty-five thousand dollars, and has permitted and allowed defendant to so proceed with said tunnel, through
34 and across said pretended Ocean Wave and Little Mary Lode mining claims, until the same has ripened into a license and permission such as entitle defendant to use its said tunnel as it penetrates the said pretended Ocean Wave and Little Mary lodes; and that said license and permission is such that defendant can not be disturbed therein either at law or in equity.

Thirteenth. Defendant further alleges that at a point in said tunnel

distant from the mouth or portal about 2180 feet and upon ground embraced within the surface boundaries of said tunnel and within the bore thereof, which location of said tunnel was prior to any other location made on said territory this defendant in driving and prosecuting its said tunnel uncovered and discovered on, to wit, the 15th day of December, A. D. 1897, a well defined lode or vein in rock in place carrying gold, silver, and other precious metals, which said vein was cut, crossed, intersected, and penetrated by the said tunnel, and that said vein so discovered as aforesaid had been segregated from the public domain of the United States, and located and appropriated by the said location of the said Uinta tunnel and tunnel site, and is upon ground that was appropriated by the said Uinta tunnel location long prior to any other location or attempted or pretended location thereof; that this defendant located said vein by calling the same the Uinta Tunnel No. 26 lode, and placed and erected at the mouth of said tunnel in a conspicuous place a location certificate or notice thereof, setting forth and showing the general course of the said lode, the number of feet claimed on each side of said discovery thereof, together with a description thereof showing the date of discovery, date of location, the number of feet claimed as aforesaid, and the name of the locator, to wit, the Uinta Tunnel Mining and Transportation Company, and afterwards caused the location certificate thereof to be filed in the office of the clerk and recorder of El Paso county, Colorado, in Book 278 at page — among the records in the office of said clerk and recorder.

Defendant further alleges and avers that it claimed by the location thereof and upon the discovery thereof, 1000 feet running in a northerly direction and 500 feet in a southerly direction; and further alleges that said discovery of said Uinta Tunnel No. 26 lode was had and made on, to wit, the 15th day of December, A. D. 1897, in full conformity with the laws of the United States and the State of Colorado in reference to such locations; a location certificate thereof being made in duplicate, one of which said certificates was posted in a conspicuous place at the mouth of said tunnel as aforesaid and the other thereof recorded in
35 the office of the clerk and recorder of El Paso county, Colorado, as aforesaid on, to wit, the 2nd day of March, A. D. 1898.

Defendant further alleges that said Uinta Tunnel No. 26 lode does not outcrop, apex, or appear at the surface of the ground at any point whatever; that said vein uncovered and discovered as aforesaid and known as and called the Uinta Tunnel No. 26 lode, is a well defined vein between two walls in rock in place carrying gold, silver, and other precious metals; and that said lode was never uncovered or discovered by any other person or persons whomsoever; and that this defendant further claims that it has the right to own, possess, operate, and enjoy said lode as of the date and by virtue of the location of said tunnel, to wit, on the said date of the 13th day of January, A. D. 1892, and by virtue of the said location certificate thereof hereinbefore described, and by virtue of the said notice

posted at the mouth of said tunnel, as hereinabove alleged, and has the right to remove said ores and minerals by it mined and extracted from said Uinta Tunnell No. 26 lode, through and along said tunnel where said tunnel enters said pretended Little Mary lode, and across said Little Mary lode as well as along and across said pretended Ocean Wave lode, and this defendant claims the right to use the bore of said tunnel, through and across said pretended Little Mary and Ocean Wave Lode mining claims by reason of the facts aforesaid, and that complainant by permitting and allowing this defendant to expend more than the sum of one hundred and thirty-five thousand dollars as aforesaid, in reaching, uncovering, and discovering said ore body, has no standing in a court of equity at this time to interfere with this defendant in crossing over, through and along said pretended Ocean Wave and Little Mary Lode mining claims, but on the contrary complainant by its conduct and actions in the premises, as hereinabove set forth has permitted and allowed defendant to expend a large sum of money and has permitted and allowed defendant so to proceed with its said tunnel, through and across the said pretended Ocean Wave and Little Mary Lode mining claims, until the same has ripened into a license and permission such as entitles defendant to use its said tunnel as it penetrated the said pretended Ocean Wave and Little Mary lodes; and that said license and permission is such that defendant can not be disturbed therein either at law or in equity.

Fourteenth. Defendant further alleges and avers that after the discovery of said vein known as Uinta Tunnel No. 26 lode, defendant drifted upon the same in a northerly and southerly direction, and that in drifting north on said vein, defendant removed and extracted ore from said vein discovered in said Unita Tunnel
36 No. 26 lode as it had a right to do, which ore so by the defendant discovered of aforesaid was removed and extracted from said Unita Tunnel No. 26 lode during the months of March, April, and February, 1898, and that no action was pretended to have been commenced by the complainant until after the discovery of said ore and the removal thereof by the defendant.

Wherefore, defendant having answered all and singular the matters and things in said bill of complaint contained, respectfully prays:

First. That it be decreed that defendant go hence without day.

Second. That complainant's complaint be dismissed, and that complainant take nothing by its said suit in the premises.

Third. That defendant do have and recover of and from complainant its costs in this behalf expended, and for such other and further relief as to the court shall be deemed just and proper.

SCOTT ASHTON AND
CHARLES J. HUGHES, JR.,
Solicitors for Defendant.

STATE OF COLORADO, } ss:
County of El Paso, }

H. E. Woods being by me first duly sworn on oath deposes and says, that he is the secretary of the Uinta Tunnel Mining and Transportation Company, the above named defendant; that he has read the above and foregoing answer and knows the contents thereof; and that the matters and things therein stated are true according to affiant's best knowledge and belief.

H. E. WOODS.

Subscribed and sworn to before me this 9th day of September, A. D. 1898.

My commission expires Dec. 29th, 1901.

[NOTARIAL SEAL.] WILLIAM D. HATTON,
Notary Public.

Indorsed: 3658. U. S. circuit court. Creede & Cripple M. and M. Co. *vs.* Uinta T. M. and T. Co. Answer to bill. Filed Sep. 19, 1898. Robert Bailey, clerk.

Thirty-fourth Day, November Term, Friday, December 22d, A. D 1899.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the seventh day of November last past.

37 THE CREEDE AND CRIPPLE CREEK Mining and Milling Company *vs.* THE UINTA TUNNEL MINING, AND Transportation Company. } 3658. In Chancery.

Bill for Inspection and Survey and for an Injunction.

This cause coming on now to be heard, C. S. Thomas, Esquire, appearing as solicitor for the complainant, and thereupon on his motion, it is ordered by the court that this cause be and the same is hereby transferred to the law docket of this court, and that the complainant may reform its bill of complaint herein as it shall be advised within twenty (20) days from this day.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

5—219

In the Circuit Court of the United States in and for said District

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING Company, Plaintiff,
vs.
THE UINTA TUNNEL, MINING, AND TRANSPORTATION Company, Defendant.
} No. 3658.

Amended Complaint.

This cause having been transferred to the law side of the docket by order of court, and leave given plaintiff to reform the complaint the plaintiff, by its attorneys, now comes and files this its amended and reformed complaint, and alleges:

1st. That the plaintiff is a corporation organized under the incorporation laws of the State of Colorado for the purpose of owning and developing mines and mining property, and during all of the times hereinafter mentioned was such corporation duly organized and existing as aforesaid.

2nd. That by virtue of its said articles of incorporation it has been and is fully authorized and empowered to take over, own, possess, and work mines and mining claims in the county of El Paso, State of Colorado, and to do all such other things as might be deemed necessary and expedient in and about the owning and development of said mining property.

3rd. That the defendant is a corporation, as plaintiff is informed and believes, organized under the laws of the State of Iowa, and claims the right to do business within the State of Colorado, by virtue of compliance with the laws of said State concerning foreign corporations.

38 4th. That the plaintiff has, and for more than five years prior to the commencement of this suit was the owner in fee and in possession, except as hereinafter mentioned, and entitled to the possession of all those mines and mining claims situated in the Cripple Creek mining district, county of El Paso, State of Colorado, known as and called the Ocean Wave and Little Mary Lode mining claims, being survey lot No. 8192, (and evidenced by mineral certificate No. 338, the patent of the United States to said plaintiff for said claims bearing date of December 21, A. D. 1893, and duly recorded in the office of the clerk and recorder of said county in Book 173, page 16, of the records thereof). That subsequent to the bringing of this suit, and prior to the order of removal herein, the said county of El Paso has been divided so that the said premises are now situated, lying, and within the county of Teller and State aforesaid.

5th. That the said Little Mary and Ocean Wave Lode mining claims were duly located and discovered on, to wit, the 2nd day of

January, 1892, by J. B. Winchell and E. W. McNeal, and that their said patent relates back to the said date of discovery and location, and takes effect at the said date for all purposes given and provided by the laws of the United States, and the State of Colorado concerning mining claims.

6th. That the said defendant, on the first day of January, 1897, by means of a tunnel driven into and under said mining claims, and each of them, wrongfully and unlawfully, and without the knowledge and consent of the plaintiff, ousted it from the possession of so much of the said premises as have been penetrated by said tunnel, and have retained and still retain possession thereof against the will of the plaintiff.

7th. That the said defendant, by means of and with the said tunnel, has entered as aforesaid into, upon, and underneath the said premises, and has ousted the plaintiff therefrom at a point about 50 feet south of the northwest corner of the Little Mary Lode mining claim, and has proceeded with said tunnel and ouster from said point southeasterly across the said Little Mary Lode mining claim and into, upon, and underneath and across the said Ocean Wave mining claim at a point where said tunnel, pursuing said southeasterly course across the said Little Mary Lode mining claim, would enter into and underneath the said Ocean Wave Lode mining claim, and continues to hold possession of said part of said premises from this plaintiff, and refuses to yield possession thereof, although often requested so to do by the plaintiff, to its damage in the sum of, to wit, five thousand dollars.

39 Plaintiff further alleges that this court has jurisdiction of said parties and the subject-matter hereof by reason of the matters and things set forth in the petition for removal of said cause, because the same involves the construction of section 2323 of the Revised Statutes of the United States in this, that the said defendant claims the right under said section to locate a tunnel underneath, across, and upon previously located mining claims, for the purpose of developing veins therein not previously known to exist, the ownership whereof it contends belongs upon discovery and location to such discoverer and locator; and also claims the right under said section to locate a tunnel across previously located mining claims for the development or discovery of mines located or to be located beyond said previously located mining claims by means of said tunnel, and upon the unappropriated mineral domain of the United States, whereas, the plaintiff claims that no such rights are given, either directly or by implication by said section.

Plaintiff also alleges that the amount and value of the property in controversy exceeds, exclusive of interest, the sum of two thousand dollars.

Wherefore, plaintiff prays judgment against the defendant:

1st. For the recovery of the possession of the said premises hereinbefore described.

2nd. For five thousand dollars damages.

3rd. For costs of suit.

A. T. GUNNELL AND
THOMAS, BRYANT AND LEE,
Attorneys for Plaintiff.

Indorsed: No. 3658. The Creede & Cripple Creek M. & M. Co. *vs.* The Uinta Tunnel M. & T. Company. Amended complaint. Filed Jan. 4, 1900. Robert Bailey, clerk. A. T. Gunnell, Thomas, Bryant, and Lee, attorneys for plaintiff.

47th Day, Wednesday, January 10th, A. D. 1900.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the seventh day of November last past.

THE CREEDE & CRIPPLE CREEK MINING AND MILLING Company
vs.
THE UINTA TUNNEL*ing* MINING AND TRANSPORTATION Company. } 3658.

Action for possession of specific real property and for damages.

At this day comes the plaintiff by W. H. Bryant, Esquire, its attorney and thereupon on his motion,

It is ordered by the court that the defendant answer the amended complaint herein within thirty (30) days from this day.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss*:

In the Circuit Court of the United States within and for the District of Colorado.

THE CREEDE AND CRIPPLE CREEK MINING AND Milling Company, Plaintiff,
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION Company, Defendant. } No. 3658. Law.

Answer.

Now comes the defendant, and answering the plaintiff's complaint heretofore filed herein, says that:

First. It admits that the plaintiff is and was a corporation organized and existing under the laws of the State of Colorado, for the purpose of owning and developing mines and mining property as in said complaint alleged.

Second. It admits that the plaintiff, by virtue of its articles of incorporation, is authorized to take over, own, possess, and work mines and mining claims as in said complaint alleged.

Third. It admits that the defendant is a corporation organized and existing under the laws of the State of Iowa, and has the right to do and is doing business within the State of Colorado, by virtue of a full compliance with the laws of said State concerning foreign corporations.

Fourth. It denies that the plaintiff is now, for more than five years prior to the commencement of this action was, or that it ever was the owner in fee of the pretended Ocean Wave and Little Mary Lode mining claims, but it admits, upon information and belief, that the plaintiff, by some means, obtained an alleged patent for said claims,

which patent the defendant alleges was not obtained or issued in pursuance of the statutes of the United States which provides for the issuance of patents, and that such patent is and should be wholly null and void. It further alleges that said Ocean Wave and Little Mary Lode mining claims were not, nor were either of them, located upon any discovery vein or veins, and that no mineral vein whatever was ever discovered or uncovered in the discovery shaft of said Ocean Wave Lode mining claim or of said Little Mary Lode mining claim.

1901, Dec. 6. Motion to strike granted.

It further denies that the plaintiff for more than five years
41 prior to the beginning of this action, or that it ever was in possession or entitled to the possession of said lode mining claims, or either of them.

Fifth. It denies that said Little Mary and said Ocean Wave Lode mining claims, or either of them, were discovered or located, at any time by J. B. Winchel and E. W. M. McNeal, or by either of them, or by any person;

and denies that said patent relates back to or takes effect from the date of said alleged discovery and location for all purposes or for any purpose given or provided by the laws of the United States or of the State of Colorado concerning mining claims; but it alleges that there never was, at any time or by any person, any location whatever made of said pretended Ocean Wave Lode mining claim or of said Little Mary Lode mining claim.

1901, Dec. 6. Motion to strike granted.

Sixth. It denies that at any time by means of a tunnel driven into and under said alleged mining claims, or either of them this defendant wrongfully or unlawfully ousted the plaintiff from the possession of so much of said premises as has been penetrated by said alleged tunnel, or that it did so without the knowledge or consent of the plaintiff;

1901, Dec. 6. Motion to strike granted.

but the defendant alleges that the plaintiff and its officers and particularly its directors and those in the possession, control, and management of the workings of said alleged lode mining claims, for more than a year last prior to the beginning of this action, have had full knowledge that the defendant was driving its said tunnel into, through, and across said pretended Ocean Wave and Little Mary Lode mining claims, and that the same was so driven into, through, and across said alleged lode mining claims with the knowledge and consent of the plaintiff and of the persons who were in possession of, and who were working and developing said alleged lode mining claims. The defendant further denies that it wrongfully or unlawfully retains possession of any part or portion of either of said alleged lode mining claims.

Seventh. It denies that by means of or with said tunnel the defendant has entered into, upon, and underneath said alleged premises and ousted the plaintiff therefrom at the point in said complaint alleged or at all.

Eighth. It admits that the amount and value of the property in controversy exceeds, exclusive of interest, the sum of two thousand dollars.

Ninth. The defendant further answering, and as a further defense to the plaintiff's complaint, alleges that it is a corporation organized and existing under and by virtue of the laws of the State
42 of Iowa, and a citizen of said State doing business in the State of Colorado, by virtue of a full compliance with the laws of said State concerning foreign corporations; that it was organized for the purpose, among other things of owning, operating, and developing lodes and lode mining claims in the then county of El Paso, now county of Teller, and State of Colorado; and that it now is and during all the times hereinafter mentioned was the owner by itself and its grantors, and in possession of the Uinta tunnel and tunnel site location and of all the rights and privileges thereunto belonging and appertaining.

Tenth. It alleges that said Uinta tunnel and tunnel site location was made by William E. Hall, W. R. Mason, and Herman Tieje on the thirteenth day of January, 1892, that said Hall, Mason, and Tieje were at the time of the location thereof, citizens of the United States, and over the age of twenty-one years; that they entered upon the unoccupied public mineral domain of the United States and located said Uinta tunnel and tunnel site, by placing at the face thereof a plain sign or notice, containing the name of the Uinta tunnel, the course and distance thereof, the date of the location, the general course thereof, and the name of said locators above named; that, in addition thereto, they placed at the face of said tunnel a written notice describing said Uinta tunnel by metes and bounds, and giving the course thereof; and that they afterwards marked the same upon the surface, and the same was designated upon the ground by a line run through the trees and underbrush upon said mountain, and by stakes set at intervals along said line duly marked with the name of said tunnel site, so that the same could be easily designated upon the ground by a line run through the trees and underbrush upon said mountain, and by stakes set at intervals along said line duly marked with the name of said tunnel site, so that the same could be easily designated upon the ground and along the surface thereof.

Eleventh. It alleges that said Uinta tunnel and tunnel site location was made under and in compliance with the provisions of section 2323 of the Revised Statutes of the United States, and the rules and regulations adopted by the Department of the Interior of the United States thereunder, and was located on the thirteenth day of January, 1892, as will appear from the location certificate thereof, which fully appears in and by the records of the county of El Paso, where the same is duly and at length recorded in Book 79, at page 492 of the records of said county, and that the defendant by divers mesne conveyances, acquired said Uinta tunnel and tunnel site location, and all the rights,
43 properties, and possessions thereunto appertaining and belonging, on or about the sixteenth day of May, 1896, and has ever since said time been the owner thereof, together with all the rights belonging thereto.

Twelfth. It alleges that prior to the acquisition by it of the title of said tunnel, work had been diligently prosecuted thereon from the time of its location up to the time of the aforesaid purchase thereof by this defendant, and that the same was prosecuted in full compliance with the provisions of section 2323 of the Revised Statutes of the United States; that at no time was work abandoned, neglected, or discontinued for any successive period of six months, but that the same was prosecuted with due diligence at all times prior to

1901, Dec. 6. Motion to strike granted.

the purchase thereof by this defendant; that, from the time of its said purchase, the defendant has prosecuted the work therein and thereon with great diligence for the purpose of boring said tunnel, and also for the discovery of veins therein and in the manner and to the extent provided for under section 2323 of the Revised Statutes of the United States; and that at no time since the defendant has been the owner thereof has work been discontinued for a period of six consecutive months.

Thirteenth. It alleges that it and its grantors have expended in and upon said tunnel the sum of more than one hundred and twenty-five thousand dollars ($125,000.00), and in addition to said expenditures have also expended upon surface work, in improvements and expenses, the further sum of not less than ten thousand dollars ($10,000.00).

Fourteenth. It alleges that its work and the work of its said grantors in and upon said tunnel has been done openly and without concealment; that the same has been at all times prosecuted under the claim of the defendant and its grantors of the right so to do by virtue of the location of said tunnel and tunnel site location under and by virtue of the laws of the United States, and under the provisions of section 2323 of the Revised Statutes of the United States; and that the expenditures thereof and the developments made thereon have been made in compliance with the terms and provisions of and in reliance upon said statute.

1901, Dec. 6. Motion to strike granted.

Fifteenth. It alleges that said Uinta tunnel entered the westerly side lines of the pretended Little Mary Lode mining claim at a point distant from the mouth or portal of said tunnel about 550 feet more than one year prior to the commencement of the above entitled action; that said tunnel was driven through said pretended Little Mary Lode mining claim with great diligence, and was driven on its course through the side lines of said pretended Ocean Wave
44 Lode mining claim, and when said tunnel had been driven through said pretended Ocean Wave and Little Mary Lode mining claims, it was distant from the mouth or portal thereof about 1175 feet; that in running said tunnel through said pretended Ocean Wave and Little Mary lode and lode mining claims, the defendant drove the same a distance of about six hundred and twenty-five feet; that the same was driven through said pretended Ocean Wave and Little Mary Lode mining claims, with the full knowledge and consent of the plaintiff at the great cost and expense as above set forth; that said tunnel was so driven through said pretended lode mining claims more than a year prior to the commencement of the above entitled action, without any protest or objection made by the plaintiff or its officers, employees or agents; but that the driving of said tunnel was acquiesced in by the plaintiff, its officers, servants, and em-

ployees; and that after driving said tunnel through and across said pretended Ocean Wave and Little Mary Lode mining claims, the defendant continued the prosecution of its said tunnel and drove the same to a distance of about twenty-two hundred feet and until it reached and penetrated the territory that is claimed by the Portland Gold Mining Company, and it was after said tunnel had reached said distance that the plaintiff instituted the above entitled action, and the same was then instituted by the plaintiff because, for the reason, and on account of the matters and things hereinafter recited and set forth.

Sixteenth. Further answering, it alleges that, at a point distant from the mouth or portal of said tunnel and in and upon the line thereof about nineteen hundred and thirty-one feet, and upon the ground embraced within the surface boundaries of the location of said tunnel and within the location of the bore thereof, which location of said tunnel was made long prior to any location upon said territory by any other person or persons, the defendant, in driving its said tunnel, discovered, uncovered, and disclosed a vein and lode in rock in place, bearing gold, silver, and other precious metals, which said vein entered said tunnel and was parallel to the line of said tunnel, for a distance of more than five hundred feet, and is still within said tunnel and within the breast thereof; that the same is now on the line and bore thereof near the south line of said tunnel; that said tunnel is at present driven into the mountain for a distance slightly exceeding twenty-two hundred feet, and is through and beyond the easterly side line of said pretended Ocean Wave Lode mining claim about eleven hundred feet; that said vein is intersected, uncovered, and discovered in said tunnel as above set forth, and is described as the Uinta Tunnel No. 23 lode, and is a cross lode to any lode ever uncovered and discovered in said territory by any person or persons; and that the same was never uncovered or discovered by any person or persons until the same was discovered and cut as aforesaid by said Uinta tunnel.

1901, Dec. 6. Motion to strike granted.

Seventeenth. It alleges that, in driving said tunnel, it has followed said cross lode by it discovered as aforesaid upon territory which was segregated and marked, and upon ground appropriated by said tunnel location parallel in location thereto, as it had full right and authority to do in virtue and by right of section 2336 Revised Statutes of the United States; that it located said cross lode by calling it Uinta Tunnel No. 23 lode and mining claim, and by placing at the mouth of said tunnel in a conspicuous place a location certificate showing the general course of said lode and the number of feet claimed on each side of the discovery thereof, together with a description thereof showing the date of discovery, the date of location, the number of feet claimed as

1901, Dec. 6. Motion to strike granted.

aforesaid, and the name of the locator thereof, to wit, the Uinta Tunnel Mining and Transportation Company; that it afterwards caused a location certificate thereof to be filed in the office of the clerk and recorder of El Paso county, Colorado, in Book 278, at page —, records of said clerk and recorder, and claimed by the location thereof from point of discovery thereof running twelve hundred feet southerly and three hundred feet northerly; that said cross lode is at the present time disclosed and uncovered and appears in the breast of said tunnel running almost parallel with the course of said tunnel; that under and by virtue of the Revised Statutes of the United States hereinabove referred to, and in, under, and by virtue of the terms of section 2336 thereof, this defendant has the right to own, possess, and enjoy said cross lode so by it uncovered and discovered as aforesaid, and to mine, extract, remove, and sell the ores therefrom; and that said vein so uncovered and disclosed as aforesaid and now appearing at the breast of said tunnel is a well defined gold and silver bearing lode, or vein in rock in place between the walls of rock and is valuable for mining and for the minerals therein contained; that said cross lode by it discovered as aforesaid was never uncovered, disclosed, or discovered by the plaintiff in any workings upon said pretended Ocean Wave and Little Mary Lode mining claims, whether done by said plaintiff or any other person or persons whomsoever that the defendant has claimed and still claims the right to own, possess, and operate said lode as of the date or by virtue of said location of said Uinta tunnel, to wit, of the thirteenth day of January, A. D. 1892, as was set forth and claimed in and by virtue of said location certificate thereof, hereinbefore described and by
46 virtue of said notice posted at the mouth of said Uinta tunnel, as hereinbefore alleged; that said vein so uncovered and disclosed as aforesaid does not outcrop or appear at the surface, nor was the same known to exist at the time of the location of said Uinta tunnel, or until the same was discovered by this defendant, as it was discovered by it on or about the eighteenth day of December, A. D. 1897; that the defendant under and by virtue of said discovery has the right to mine, extract, and sell the ores and minerals therefrom, and has the right to mine, extract, and sell ores and minerals from said vein over, through and along said tunnel as said tunnel entered along, and across said pretended Ocean Wave and Little Mary Lode mining claims; that the defendant claims the right to use the bore of said tunnel by reason of the facts aforesaid as it penetrates said Little Mary lode and lode mining claim and across the same as hereinabove stated, and as said tunnel likewise penetrates through and across said pretended Ocean Wave lode and lode mining claim as hereinabove stated;

that the plaintiff, by permitting and allowing this defendant to expend more than the sum of one hundred and thirty-five thousand dollars ($135,000) as aforesaid in reaching, uncovering, and discovering said ore body, has no right to interfere with this defendant in operating its tunnel over, through and along said pretended Ocean Wave and Little Mary lode and lode mining claims; but, on the contrary the plai-tiff by its conduct and actions in the premises, as hereinbefore recited and set forth, has permitted and allowed this defendant to expend said large sum of money, and has permitted and allowed it so to proceed with said tunnel through and across said pretended Ocean Wave and Little Mary lode and lode mining claims, until the same has ripened into such a license and permission to so cross said pretended Ocean Wave and Little Mary lode and lode mining claims that the defendant can not now be disturbed in its use of said tunnel.

Eighteenth. It alleges that at a point distant from the mouth or portal of said tunnel, and in and upon the line thereof two thousand one hundred and two feet, upon the ground embraced within the surface boundaries of the location of said Uinta Tun-el location, and within the face thereof, which location of said tunnel was made long prior to any location upon said territory by any other person or persons whatever; that in driving said tunnel this defendant discovered, uncovered, and disclosed a vein and lode in rock in place, which carries gold, silver, and other precious metals on the twenty-third day of December, A. D. 1897, which said vein was cut, crossed, intersected, and penetrated by said tunnel, and said vein so discovered as aforesaid had been segregated from the public
47 domain of the United States, and located and appropriated by said Uinta tunnel and tunnel site, and is upon ground that was appropriated by said Uinta Tunnel location long prior to any other location, or attempted or pretended location thereof; that this defendant located said vein by calling the same Uinta Tunnel No. 24 lode and placed and erected at the mouth of said tunnel in a conspicuous place a location certificate or notice thereof, setting forth and showing the general course of said lode, the number of feet claimed on each side of said discovery thereof, together with a description thereof showing the date of discovery, the date of location, the number of feet claimed as aforesaid, and the name of the locator thereof, to wit, the Uinta Tunnel Mining and Transportation Company; that it afterwards caused the location certificate thereof to be filed in the office of the clerk and recorder of El Paso county, Colorado, in Book 278 at page — among the records in the office of said clerk and recorder, and claimed by the location thereof from the point of discovery thereof running northerly seven hundred and fifty feet and southerly seven hundred

1901, Dec. 6. Motion to strike granted.

and fifty feet; that said discovery of said Uinta Tunnel No. 24 lode was made on the twenty-third day of December, A. D. 1897, in full conformity with the laws of the United States and of the State of Colorado in reference to such locations; that a location certificate thereof was made in duplicate, one of which certificates was posted in a conspicuous place near the mouth of said tunnel, and the other recorded in the office of the clerk and recorder of El Paso county, Colorado, as aforesaid, on the second day of March, A. D. 1898; that said Uinta Tunnel No. 24 lode and the vein therein discovered as aforesaid does not outcrop, apex, or appear on the surface of the ground at any point whatever; and that this defendant has claimed and has the right to own, possess, operate, and enjoy said lode as of the date and by virtue of the location of said Uinta Tunnel No. 24 lode, to wit, on the thirteenth day of January, A. D. 1892, and so sets forth and claims in and by virtue of said location certificate thereof hereinbefore described and by virtue of said notice posted at the mouth of said Uinta Tunnel No. 24 lode, as hereinbefore alleged; that, under and by virtue of said discovery it has the right to mine, extract, and sell the ores and minerals therefrom, and has the right to mine, extract, and sell the ores and minerals from said vein, and has the right to remove said ores and minerals by it mined and extracted through and along said tunnel where said tunnel enters said pretended Little Mary lode and lode mining claim, and across said pretended Little Mary lode and lode mining claim, as well as across and along said pretended Ocean Wave lode and lode mining claim; that the defendant claims the right to use the bore of said tunnel through and across said pretended Ocean Wave
48 and Little Mary Lode mining claims by reason of the facts aforesaid, and that the plaintiff, by permitting and allowing this defendant to expend more than the sum of one hundred and thirty-five thousand dollars ($135,000) as aforesaid in reaching, uncovering, and discovering said ore body, has no right to interfere with the defendant in operating its tunnel over, through and along said pretended Ocean Wave and Little Mary lode- and lode mining claims, but that, on the contrary the plaintiff by its conduct and actions in the premises as hereinabove recited and set forth has permitted and allowed the defendant to expend said sum of one hundred and thirty-five thousand dollars ($135,000) and has permitted and allowed the defendant to so proceed with said tunnel through and across said pretended Ocean Wave and Little Mary lode- and lode mining claims until the same has ripened into such a license and permission as entitles the defendant to use its said tunnel as it penetrates said pretended Ocean Wave and Little Mary lode- and lode mining claims, and that said license and permission is such that the defendant can not be disturbed therein.

1901, Dec. 6. Motion to strike granted.

Nineteenth. It alleges that at a point in said tunnel from the mouth or portal thereof about two thousand one hundred and eighteen feet, upon ground embraced within the surface boundaries of said Uinta tunnel and within the bore thereof, which location of said tunnel was prior to any other location made on said territory aforesaid, the defendant, in driving and prosecuting said tunnel, uncovered, and discovered, on the sixth day of January, A. D. 1898, a well defined lode or vein in rock in place, which carried gold, silver, and other precious metals, which said vein was cut, crossed, intersected, and penetrated by said tunnel; that said vein so discovered as aforesaid has been segregated from the public domain of the United States, and located and appropriated by the Uinta Tunnel location long prior to any location or attempted or pretended location thereof; that this defendant located said vein by calling the same Uinta Tunnel No. 25 lode, and placed and erected at the mouth of said tunnel in a conspicuous place a location certificate or notice thereof setting forth and showing the general course of said lode, the number of feet claimed on each side of said discovery thereof, together with a description thereof, showing the date of discovery, the date of location, the number of feet claimed as aforesaid, and the name of the locator, to wit, the Uinta Tunnel Mining and Transportation Company; that it afterwards caused a location certificate thereof to be filed in the office of the clerk and recorder of El Paso county, Colorado, in Book 278, at page — among the records in the office of said clerk and recorder
49 and claimed by the location thereof from the point of discovery thereof, running seven hundred and fifty feet in a northerly direction and seven hundred and fifty feet in a southerly direction; that said discovery of said Uinta Tunnel No. 25 lode was had and made on the sixth day of January, A. D. 1898, in full conformity with the laws of the United States, and of the State of Colorado, in reference to such locations; that a location certificate thereof was made in duplicate one of which certificates was posted in a conspicuous place at the mouth of said tunnel as aforesaid, and the other thereof recorded in the office of the clerk and recorder of El Paso county, Colorado, as aforesaid, on the second day of March, A. D. 1898; that said Uinta Tunnel No. 25 lode and vein thereof as aforesaid does not outcrop, apex, or appear at the surface or at any other point whatever; that under and by virtue of said discovery, this defendant has the right to mine, extract, remove, and sell the ores and minerals therefrom; that said vein uncovered and discovered as aforesaid and known as and called Uinta Tunnel No. 25 lode, is a well defined vein between two walls *in* rock in place and carries gold, silver, and other precious metals; that said lode was never uncovered or discovered by the plaintiff or any other person or persons whomsoever; and that this

1901, Dec. 6. Motion to strike granted.

defendant has claimed and has the right to own, possess, operate, and enjoy said lode as of the date by virtue of the location of said Uinta tunnel, to wit, the thirteenth day of January, A. D. 1892, and so sets forth and claims in and by virtue of said location certificate thereof, hereinbefore described and by virtue of said notice posted at the mouth of said Uinta tunnel and hereinbefore alleged; that it has the right to remove said ores and minerals, by it mined and extracted from said Uinta Tunnel No. 25 lode, through and along said tunnel where said tunnel enters said pretended Little Mary lode and lode mining claim, and across said pretended Little Mary lode and lode mining claim, as well as along and across said pretended Ocean Wave lode and lode mining claim; that it claims the right to use the bore of said tunnel, through and across said pretended Ocean Wave and Little Mary lode- and lode mining claims by reason of the facts aforesaid; that the plaintiff by permitting and allowing this defendant to expend more than the sum of one hundred and thirty-five thousand dollars ($135,000) as aforesaid in reaching, uncovering, and discovering said ore body has no right to interfere with this defendant in operating its tunnel, over, through, and along said pretended Ocean Wave and Little Mary lode- and lode mining claims; but, on the contrary, the plaintiff, by its conduct and actions in the premises hereinabove recited and set forth has permitted and allowed the defendant to expend the sum of more than one hundred and thirty-five thousand dollars ($135,000) and has permitted and allowed the defendant to so proceed with said tunnel, through and across said pretended Ocean Wave and Little Mary Lode mining claims until the same has ripened into such a license and permission as entitles the defendant to use its said tunnel as it penetrates said pretended Ocean Wave and Little Mary lode- and lode mining claims; and that said license and permission is such that the defendant can not be disturbed therein.

1901, Dec. 6. Motion to strike granted.

Twentieth. It alleges that, at a point in said tunnel distant from the mouth or portal about two thousand one hundred and eighty feet, upon ground embraced within the surface boundaries of said tunnel and within the bore thereof, which location of said tunnel was prior to any other location made on said territory, this defendant in driving and prosecuting its said tunnel, uncovered and discovered on the fifteenth day of December, A. D. 1897, a well defined lode or vein in rock in place, which carries, gold, silver, and other precious metals, which said vein was cut, crossed, intersected and penetrated by said tunnel; that said vein so discovered as aforesaid had been segregated from the public domain of the United States, and located and appropriated by said location of said Uinta tunnel and tunnel site, and is upon ground that was appropriated by said Uinta Tunnel location

long prior to any other location or attempted or pretended location thereof; that this defendant located said vein by calling the same Uinta Tunnel No. 26 lode and placed and erected at the mouth of said tunnel in a conspicuous place, a location certificate or notice thereof, setting forth and showing the general course of said lode, the number of feet claimed on each side of said discovery thereof, together with a description thereof, showing the date of discovery, the date of location, the number of feet claimed as aforesaid, and the name of the locator, to wit, the Uinta Tunnel Mining and Transportation Company; that it afterwards caused the location certificate thereof to be filed in the office of the clerk and recorder of El Paso county, Colorado, in Book 278, at page — among the records in the office of said clerk and recorder; that it claimed by the location thereof and upon the discovery thereof one thousand feet running in a northerly direction and five hundred feet in a southerly direction from the point of discovery thereof; that said discovery of said Uinta Tunnel No. 26 lode was had and made on the fifteenth day of December, A. D. 1897, in full conformity with the laws of the United States and of the State of Colorado in reference to such locations; that a location certificate thereof was made in duplicate, one of which certificates was posted in a conspicuous place at the mouth of said tunnel as aforesaid, and the other thereof
51 recorded in the office of the clerk and recorder of El Paso county, Colorado, as aforesaid, on the second day of March, A. D. 1898; that said Uinta Tunnel No. 26 lode does not outcrop, apex, or appear at the surface of the ground at any point whatever; that said vein uncovered and discovered as aforesaid, and known as and called Uinta Tunnel No. 26 lode, is a well defined vein between two walls of rock in place, and carries gold, silver, and other precious metals; that said lode was never uncovered or discovered by the plaintiff or any other person or persons whomsoever; that this defendant further claims that it has the right to own, possess, operate, and enjoy said lode as of the date and by virtue of the location of said tunnel to wit, on the thirteenth day of January, A. D. 1892, that by virtue of said location certificate thereof hereinbefore described, and by virtue of said notice posted at the mouth of said tunnel as hereinbefore alleged, it has the right to remove said ores and minerals by it mined and extracted from said Uinta Tunnel No. 26 lode, through and along said tunnel where said tunnel enters said pretended Little Mary lode and lode mining claim and across said Little Mary lode and lode mining claim, as well as along and across said pretended Ocean Wave lode and lode mining claim; that this defendant claims the right to use the bore — said tunnel, through and across said pretended Little Mary and Ocean Wave lode and lode mining claims

1901, Dec. 6. Motion to strike granted.

by reason of the facts aforesaid; that the plaintiff, by permitting and allowing this defendant to expend more than the sum of one hundred and thirty-five thousand dollars ($135,000) as aforesaid, in reaching, uncovering, and discovering said ore body, has no right to interfere with this defendant in crossing over, through, and along said pretended Ocean Wave and Little Mary lode-and lode mining claims; but on the contrary the plaintiff by its conduct and actions in the premises as hereinbefore set forth, has permitted and allowed the defendant to expend said large sum of money, and has permitted and allowed the defendant to so proceed with its said tunnel through and across said pretended Ocean Wave and Little Mary lodes and lode mining claims, until the same has ripened into a license and permission such as entitles the defendant to use its said tunnel as it penetrated said pretended Ocean Wave and Little Mary lodes and lode mining claims; and that said license and permission is such that the defendant can not be disturbed therein.

1901, Dec. 6. Motion to strike granted.

Twenty-first. It further avers that the patent of the United States issued for said Ocean Wave and Little Mary lodes and lode mining claims was issued subject to the act of Congress in reference to tunnel rights and subject to the laws of the State of Colorado in reference to the right to run tunnels through ground that may be patented, for the purpose
52 of reaching territory that belong- to tunnel owners beyond such patented claims, and subject to the rights which the defendant The Uinta Tunnel Mining and Transportation Company and its grantors, had acquired by reason of the location of said Uinta tunnel, and in and to any and all lodes, veins, and mining claims, that it might cut or discover in driving said tunnel as is guaranteed to the locator of said tunnel under and by virtue of section 2323 of the Revised Statutes of the United States; that the pretended discovery alleged and pretended to have been made in and upon said pretended Ocean Wave and Little Mary lodes and lode mining claims and by virtue of which the plaintiff claims the right to patent the same under the laws of the United States, was not made until long after the location of said Uinta tunnel, and at the time said pretended locations were made said locators thereof were advised and knew that said tunnel had been located and had been and was being prosecuted with due diligence and in strict compliance with the terms and conditions of the statutes of the United States and of the State of Colorado which authorize and provide for the location and prosecution of such tunnels and which defines and determines the rights pertaining thereto; and that said pretended Ocean Wave and Little Mary Lode mining claims so far as the same may be now claimed and possessed by said plaintiff, were taken and held subject to the rights of this defendant as owner of said Uinta tunnel,

located in accordance with section 2323 of the Revised Statutes of the United States and also subject to the rights of this defendant to cross said claims and to drive drifts therein and to follow said lode claims as located by this defendant and to reach lode claims so owned by this defendant, as hereinbefore and hereinafter stated.

Twenty-second. It avers that from about twenty-two hundred and fifty feet from the mouth or portal of said Uinta tunnel, said tunnel run- along, through, and across the Black Jasper lode; that on the thirteenth day of January, A. D. 1897, Vance Carothers, who was then and there a citizen of the United States over the age of twenty-one years, entered upon the unoccupied public mineral domain of the United States and located what is known as said Black Jasper Lode mining claim; that the same was marked by six substantial posts, one at each corner and one at the center of each side line thereof, which posts were hewed and marked on the sides in towards the claim; that a discovery shaft was sunk thereon to a depth of more than ten feet from the lowest point to the rim thereof at the surface, which disclosed a well defined vein which carried gold and other precious metals therein; that at the point of said discovery the locator placed a plain sign or notice con-
53 taining the name of the lode, the date of the discovery, the name of the locator, and the general course thereof; that afterwards, on the second day of February, A. D. 1897, said Vance Carothers caused a location certificate to be made of said Black Jasper lode, which contained the name of the lode, the name of the locator, the date of the location, and described the same by metes and bounds, that said location certificate was afterwards on the second day of February, A. D. 1897, duly recorded in the office of the clerk and recorder of El Paso county, Colorado; that this defendant by mesne conveyances from the locator and owner of said Black Jasper Lode mining claim, became the owner thereof and is now such owner; that said tunnel enters said Black Jasper lode as aforesaid at about twenty-two hundred and fifty feet from the mouth or portal thereof, and continues along and through said Black Jasper lode as located to the breast thereof; that this defendant has the right, under the laws of the State of Colorado and the acts of Congress to enter through and along said Ocean Wave and Little Mary lodes and lode mining claims for the purpose of reaching the lode claims owned by this defendant beyond the mouth or portal of said tunnel, and beyond said Ocean Wave and Little Mary lodes and lode mining claims; that said Ocean Wave and Little Mary lodes and lode mining claims lie between the mouth or portal of said tunnel and said Black Jasper Lode mining claim and between said Uinta Tunnel No. 23 lode and mining claim and said Uinta Tunnel No. 24 lode and mining claim and

1901, Dec. 6. Motion to strike granted.

said Uinta Tunnel No. 25 lode, and mining claim and said Uinta Tunnel No. 26 lode and mining claim, from which said last lode and mining claim this defendant has been shipping rich and valuable ore; that by reason of the ownership of said lode and mining claims last above described and by virtue of the laws of the State of Colorado and the acts of Congress, this defendant has the right to cross through and beyond said Ocean Wave and Little Mary lodes and lode mining claims for the purpose of reaching said lode mining claims which are owned by and which belong to this defendant.

Wherefore, the defendant prays judgment against the plaintiff that it may have the right to use and operate its said tunnel through said pretended Ocean Wave and Little Mary lodes and lode mining claims as said tunnel is now constructed and operated.

Second. For judgment declaring that the defendant has the right to mine and extract ore by it uncovered and discovered in said Uinta Tunnel No. 23, lode, Uinta Tunnel No. 24 lode, Uinta Tunnel No. 25 lode, and Uinta Tunnel No. 26 lode, and to haul the
54 same through its said tunnel, through, across, and along said Ocean Wave and Little Mary lodes and lode mining claims, as the same are now penetrated by said tunnel.

Third. For its costs of suit in this behalf expended or incurred.

CHAS. J. HUGHES, JR.,
SCOTT ASHTON,
Attorneys for the Defendant.

STATE OF COLORADO, } ss:
County of Teller, }

H. E. Woods, being duly sworn, on oath deposes and says that he is the secretary of The Uinta Tunnel, Mining and Transportation Company, the above named defendant; that he has read the above and foreging answer and knows the contents thereof, and that the matters and things therein stated are true according to affiant's best knowledge and belief.

H. E. WOODS.

Subscribed and sworn to before me this ninth day of February, A. D. 1900.

My commission as a notary public will expire April 14th, 1903.

[NOTARIAL SEAL.] WILLIAM D. HATTON,
Notary Public.

Indorsed: No. 3658, div. — law. In the U. S. circuit court. The Creede & Cripple Creek M. & M. Co., plaintiff, *vs.* The Uinta Tunnel M. & T. Co., defendant. Answer to complaint. Filed Feb. 10, 1900.

Robert Bailey, clerk. Chas. J. Hughes, Jr., and Scott Ashton, attorneys for the defendant.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court of the United States within and for said District.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING COMPANY, Plaintiff,
vs.
THE UINTA TUNNEL, MINING AND TRANSPORTATION COMPANY, Defendant.

The plaintiff now comes and demurs to the following parts of the answer of the above named defendant:

First. To that part of the fourth paragraph thereof commencing with the words "which patent" in the fourth line of the second page, and ending with the words "Little Mary Lode mining claim" in the twelfth line of the said second page, because the same is immaterial, redundant and insufficient as an answer to the complaint or any part thereof.

55 Second. It demurs to all that part of the fifth paragraph beginning with the words "and denies" on the nineteenth line of the second *second* page of said answer, and ending with the word "claim" in the next to the last line of said page, because the same is irrelevant and insufficient as an answer to the complaint in said cause.

Third. It demurs to so much of the sixth paragraph of said answer which begins with the words "But the defendant alleges" in the fifth line of the third page of said answer, down to the end thereof, because the same does not state facts constituting a sufficient answer to the complaint in said cause.

Fourth. Plaintiff demurs to the tenth, eleventh, twelfth, thirteenth and fourteenth paragraphs of said answer because the same do not state facts sufficient to constitute an answer to said contract.

Fifth. Plaintiff demurs to that part of the fifteenth paragraph of said answer commencing with the words "that said tunnel" in the third line from the bottom of page six, to the end of said paragraph, because the same does not state facts sufficient to constitute any answer to the plaintiff's complaint.

Sixth. The plaintiff demurs to the sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, and twenty-second paragraphs of said complaint, because the same and each and every part thereof is wholly insufficient and states no facts in any manner sufficient to constitute an answer or defense to the complaint in said cause.

Wherefore plaintiff prays judgment upon its said demurrer as to all and singular said parts of said answer herein demurred to as aforesaid.

THOMAS, BRYANT, AND LEE,
Attorneys for Plaintiff.

Indorsed: 3658. U. S. circuit court, district of Colorado. The Creede and Cripple Creek Mining and Milling Company *vs.* The Uinta Tunnel Mining and Transportation Company. Demurrer to answer. Filed Feb'y 28, 1900. Robert Bailey, clerk. Thomas, Bryant and Lee, plaintiff's attorneys.

First Day, May Term, Tuesday, May 7th, A. D. 1901.

Pleas in the United States circuit court for the district of Colorado, at a term thereof begun and held at the United States court house at Denver on the first Tuesday (it being the seventh day) of May, in the year of our Lord one thousand nine hundred and one.

56 Present: The Honorable Moses Hallett, district judge, Earl M. Cranston, Esquire, district attorney. Dewey C. Bailey, Esquire, marshal. Robert Bailey, Esquire, clerk.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING Company *vs.* THE UINTA TUNNEL MINING AND TRANSPORTATION Company. } 3658.

Action for possession of specific real property and for damages.

At this day comes the plaintiff by Thomas R. Woodrow, and thereupon on its motion, it is ordered by the court that plaintiff's attorney may withdraw permanently from the files of the court in this cause, the patent for the Ocean Wave and Little Mary Lode mining claims upon leaving a receipt therefor with the clerk of the court.

32nd Day, Saturday, June 22d, A. D. 1901.

Present: The Honorable Moses Hallett, district judge, and other officers as noted on the seventh day of May last past.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING Company *vs.* THE UINTA TUNNEL MINING AND TRANSPORTATION Company. } 3658.

Action for possession of specific real property and for damages.

At this day comes the plaintiff by H. H. Lee, Esquire, its attorney, and the defendant by C. J. Hughes, Jr., Esquire, its attorney also comes.

And the demurrer to the answer herein coming on now to be heard is argued by counsel, and thereupon the court declines to proceed further with this cause until the pleadings herein shall be put in proper form.

Thirty-sixth Day, May Term, Thursday, June 27th, A. D. 1901.

Present: The Honorable Moses Hallett, district judge, and the Honorable John A. Riner, district judge of the district of Wyoming assigned to the district of Colorado, and other officers as noted on the seventh day of May last past.

And before the Honorable Moses Hallett, district judge, the following proceedings were had:

57 THE CREEDE AND CRIPPLE CREEK MINING AND MILLING Company
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY. } 3658.

Action for possession of specific real property and for damages.

At this day comes H. H. Lee, Esquire, attorney for the plaintiff, no one appearing for the defendant. And the motion to strike out parts of the answer herein coming on now to be heard is submitted to the court, and thereupon it is ordered by the court that the defendant file herein a brief on said motion within eight (8) days from this day.

Twenty-second Day, November Term, Friday, December 6th, A. D. 1901.

Present: The Honorable Moses Hallett, district judge and other officers as noted on the 5th day of November last past.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING Company
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY. } 3658.

Action for possession of specific real property and for damages.

The motion to strike from the answer of the defendant certain portions thereof having heretofore come on to be heard and having been argued by counsel, H. H. Lee, Esquire appearing as attorney for the plaintiff, and C. J. Hughes, Jr., Esquire, appearing as attor-

ney for the defendant, and having been taken under advisement and the court having considered the same and being now fully advised in the premises.

It is ordered by the court for good and sufficient reasons to the court appearing that said motion be and the same is hereby granted, and that all those portions of the answer commencing with the words "which patent" in the fourth line of the second page, and ending with the words "Little Mary Lode mining claim" in the twelfth line of the same page; and all that part of the fifth paragraph commencing with the words "and denies" in the fourth line thereof, and ending with the word "claim" at the conclusion of said paragraph. All that part of the sixth paragraph of said answer which begins with the words "but the defendant alleges" in the sixth line of said paragraph down to the end thereof. All of the tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first
58 and twenty-second paragraphs of said answer be and the same are hereby stricken from the answer to the amended complaint herein.

Fifty-fifth Day, November Term, Wednesday, January 29, A. D. 1902.

Present: The Honorable Moses Hallett, district judge, and the Honorable John A. Riner, district judge of the district of Wyoming, assigned to the district of Colorado, and other officers as noted on the 5th day of November last past.

And before the Honorable John A. Riner, district judge, of the district of Wyoming assigned to the district of Colorado, the following proceedings were had.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING Company
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY. } 3658.

Action for possession of specific real property and for damages.

At this day comes the plaintiff by Harry H. Lee, Esquire, its attorney, and the defendant by Scott Ashton, Esquire, its attorneys also comes. And thereupon comes a jury, to wit:

Isadore S. Frank.	A. F. Roberts,
Thomas W. Rayburn,	George Tuck,
George F. Roberts,	William Wise,
Frederick O. Vaile,	W. C. Carnagie,
George W. Vallery,	E. C. Evans,
Edward Wilson,	I. Van Kuren.

Twelve good and lawful men and they are duly selected and tried,

empanelled and sworn to well and truly try the issues herein joined, and a true verdict render according to the evidence. And thereupon comes the evidence. And the said jurors having heard the evidence produced herein and being thereto duly instructed by the court upon their oaths do say that they find the issues herein joined for the plaintiff, and that it is the owner and entitled to the possession of the premises in its complaint set forth and described.

Wherefore, it is considered by the court that the plaintiff do have and recover of and from the defendant, possession of the premises, lands, and tenements in its amended complaint herein set forth and described, to wit, the Ocean Wave and Little Mary Lode mining claims, being survey lot No. 8192, situated in the Cripple Creek mining district, Teller county, Colorado, and that it have a writ of possession therefor.

59 It is further considered by the court that the plaintiff do have and recover of and from the defendant its costs by it in this behalf laid out and expended, to be taxed, and have execution therefor.

WEDNESDAY, *January 29th*, 1902.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING Company
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY. } 3658.

Action for possession of specific real property and for damages.

On this 29th day of January, A. D. 1902, the same being one of the regular juridical days of the November, A. D. 1901, term of this court, there being present the Honorable John A. Riner, district judge of the district of Wyoming assigned to the district of Colorado,

It is considered by the court that the plaintiff do have and recover of and from the defendant possession of the premises, lands, and tenements in its amended complaint set forth and described as follows, to wit: The Ocean Wave and Little Mary Lode mining claims, situate in California mining district, Lake county, Colorado, being survey lot No. 8192, and evidenced by mineral certificate No. 338, the patent of the United States to said plaintiff for said claims bearing date of December 21, A. D. 1893, and duly recorded in the office of the clerk and recorder of said county in Book 173, page 16, of the records thereof, and that it have a writ of possession therefor.

It is further considered by the court that the plaintiff do have and recover of and from the defendant its costs by it in this behalf laid out and have execution therefor.

73rd Day, Tuesday, March 4th, A. D. 1902.

Present: The Honorable Moses Hallett, district judge, and the

Honorable John A. Riner, district judge of the district of Wyoming assigned to the district of Colorado, and other officers as noted on the 5th day of November last past.

And before the Honorable John A. Riner, district judge of the district of Wyoming assigned to the district of Colorado the following proceedings were had:

60 THE CREEDE AND CRIPPLE CREEK MINING AND Milling Company
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION Company. } 3658.

Action for possession of specific real property and for damages.

At this day comes the plaintiff by H. H. Lee, Esquire, its attorney, and the defendant by Scott Ashton, Esquire, its attorney also comes.

And the motion for a new trial of the issues herein joined coming on now to be heard is submitted to the court, without argument. And the court having considered the same and being now fully advised in the premises.

It is ordered by the court, for good and sufficient reasons to the court appearing that said motion be and the same is hereby overruled.

And thereupon on motion of the defendant, it is ordered by the court that the defendant have day and to and including thirty (30) days from this day within which time to file herein a bill of exceptions reserved by it upon the trial of the issues herein joined, and cost bond on writ of error shall be in the sum of three hundred dollars ($300).

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States within and for the District of Colorado.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLing Company, Plaintiff,
vs.
THE UINTA TUNNEL, MINING, AND TRANSPORTATION Company, Defendant. } 3658. Law.

Bill of Exceptions.

Be it remembered, that, on the tenth day of February, A. D. 1900, the defendant above named filed in the above entitled court in the

above entitled matter, its answer, which is in the words and figures following, to wit:

61 UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States within and for the District of Colorado.

THE CREEDE AND CRIPPLE CREEK MINING AND Milling Company, Plaintiff,
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION Company, Defendant. } 3658. Law.

Answer.

Now comes the defendant and answering the plaintiff's complaint heretofore filed herein says that:

First. It admits that the plaintiff is and was a corporation organized and existing under the laws of the State of Colorado for the purpose of owning and developing mines and mining property as in said complaint alleged.

Second. It admits that the plaintiff by virtue of its articles of incorporation, is authorized to take over, own, possess, and work mines and mining claims as in said complaint alleged.

Third. It admits that the defendant is a corporation organized and existing under the laws of the State of Iowa and has the right to do, and is doing, business within the State of Colorado by virtue of a full compliance with the laws of said State concerning foreign corporations.

Fourth. It denies that the plaintiff is now, for more than five years prior to the commencement of this action was, or that it ever was the owner in fee of the pretended Ocean Wave and Little Mary Lode mining claims; but it admits, upon information and belief, that the plaintiff by some means, obtained an alleged patent for said claims

1901, Dec. 6. Motion to strike granted.

which patent the defendant alleges was not obtained nor issued in pursuance of the statutes of the United States which provide for the issuance of patents, and that such patent is and should be wholly null and void. It further alleges that said Ocean Wave and Little Mary Lode mining claims were not, nor were either of them located upon any discovery vein or veins, and that no mineral vein whatever was ever discovered or uncovered in the discovery shaft of said Ocean Wave Lode mining claim or of said Little Mary Lode mining claim.

It further denies that the plaintiff for more than five years prior to the beginning of this action, or that it ever, was in possession or entitled to the possession of said lode mining claims or either of them.

62 Fifth. It denies that said Little Mary and said Ocean Wave Lode mining claims, or either of them, were discovered or located, at any time by J. B. Winchell and E. W. McNeal, or by either of them or by any person;

1901, Dec. 6. Motion to strike granted.

and denies that said patent relates back to or takes effect from the date of said alleged discovery and location for all purposes or for any purpose given or provided by the laws of the United States or of the State of Colorado concerning mining claim-; but it alleges that there never was, at any time or by any person, any location whatever made of said pretended Ocean Wave Lode mining claim or of said Little Mary Lode mining claim.

Sixth. It denies that at any time, by means of a tunnel driven into and under said alleged mining claims, or either of them, this defendant wrongfully or unlawfully ousted the plaintiff from the possession of so much of said premises as has been penetrated by said alleged tunnel, or that it did so without the knowledge or consent of the plaintiff;

1901, Dec. 6. Motion to strike granted.

but the defendant alleges that the plaintiff and its officers, and particularly its directors and those in the possession, control, and management of the workings of said alleged lode mining claims, for more than a year last prior to the beginning of this action, have had full knowledge that the defendant was driving its said tunnel into, through, and across said pretended Ocean Wave and Little Mary Lode mining claims, and that the same was so driven into, through, and across said alleged lode mining claims with the knowledge and consent of the plaintiff and of the persons who were in possession of, and who were working and developing said alleged lode mining claims. The defendant further denies that it wrongfully or unlawfully retains possession of any part or portion of either of said alleged lode mining claims.

Seventh. It denies that by means of or with said tunnel the defendant has entered into, upon, and underneath said alleged premises and ousted the plaintiff therefrom at the point in said complaint alleged or at all.

Eighth. It admits that the amount and value of the property in controversy exceeds, exclusive of interest, the sum of two thousand dollars.

Ninth. The defendant further answering, and as a further defense to the plaintiff's complaint, alleges that it is a corporation organized and existing under and by virtue of the laws of the State of Iowa, and a citizen of said State doing business in the State of Colorado, by virtue of a full compliance with the laws of said State concerning foreign corporations; that it was organized for the pur-
63 pose, among other things, of owning, operating, and developing lodes and lode mining claims in the then county of El Paso, now county of Teller, and State of Colorado; and that it now is and during all the times hereinafter mentioned was the owner by itself and its grantors, and in possession of the Uinta tunnel and tunnel site location and of all the rights and privileges thereunto belonging and appertaining.

Tenth. It alleges that said Uinta tunnel and tunnel site location was made by William E. Hall, W. R. Mason, and Herman Tieje on the thirteenth day of January, 1892; that said Hall, Mason, and Tieje, were, at the time of the location thereof, citizens of the United States, and over the age of twenty-one years; that they entered upon the unoccupied public mineral domain of the United States and located said Uinta tunnel and tunnel site, by placing at the face thereof a plain sign or notice containing the name of the Uinta tunnel, the course and distance thereof, the date of the location, the general course thereof, and the name of said locators above named; that, in addition thereto, they placed at the face of said tunnel a written notice, describing said Uinta tunnel by metes and bounds, and giving the course thereof; and that they afterwards marked the same upon the surface, and the same was designated upon the ground by a line run through the trees and underbrush upon said mountain, and by stakes set at intervals along said line duly marked with the name of said tunnel site, so that the same could be easily designated upon the ground by a line run through the trees and underbrush upon said mountain, and by stakes set at intervals along said line duly marked with the name of said tunnel site, so that the same could be easily designated upon the ground and along the surface thereof.

Eleventh. It alleges that said Uinta tunnel and tunnel site location was made under and in compliance with the provisions of section 2323 of the Revised Statutes of the United States, and the rules and regulations adopted by the Department of the Interior of the United States thereunder, and was located on the thirteenth day of January, 1892, as will appear from the location certificate thereof, which fully appears in and by the records of the county of El Paso, where

1901, Dec. 6. Motion to strike granted.

the same is duly and at length recorded in book 79, at page 492, of the records of said county, and that the defendant by divers mesne conveyances, acquired said Uinta tunnel and tunnel site location, and all the rights, properties, and possessions thereunto appertaining and belonging on or about the sixteenth day of May, 1896, and has ever since said time been the owner thereof, together with all the rights belonging thereto.

64 Twelfth. It alleges that prior to the acquisition by it of the title of said tunnel, work had been diligently prosecuted thereon from the time of its location up to the time of the aforesaid (purchaser) thereof by this defendant, and that the same was prosecuted in full compliance with the provisions of section 2323 of the Revised Statutes of the United States; that at no time was work abandoned, neglected, or discontinued for any successive period of six months, but that the same was prosecuted with due diligence at all times prior to the purchase thereof by this defendant; that from the time of its said purchase the defendant has prosecuted the work therein and thereon with great diligence for the purpose of boring said tunnel, and also for the discovery of veins therein and in the manner and to the extent provided for under section 2323 of the Revised Statutes of the United States; and that at no time since the defendant has been the owner thereof has work been discontinued for a period of six consecutive months.

Thirteenth. It alleges that it and its grantors have expended in and upon said tunnel the sum of more than one hundred and twenty-five thousand dollars ($125,000) and in addition to said expenditures have also expended upon surface work, in improvements and expenses, the further sum of not less than ten thousand dollars ($10,000).

Fourteenth. It alleges that its work and the work of its said grantors in and upon said tunnel has been done openly and without concealment; that the same has been at all times prosecuted under the claim of the defendant and its grantors of the right so to do by virtue of the location of said tunnel and tunnel site location under and by virtue of the laws of the United States, and under the provisions of section 2323 of the Revised Statutes of the United States; and that the expenditures thereof and the developments made thereon have been made in compliance with the terms and provisions of and in reliance upon said statute.

Fifteenth. It alleges that said Uinta tunnel entered the westerly side lines of the pretended Little Mary Lode mining claim at a point distant from the mouth or portal of said tunnel about 550 feet, more than one year prior to the commencement of the above entitled action; that said tunnel was driven through said pretended Little Mary Lode mining claim with great diligence, and was driven on its course

1901, Dec. 6. Motion to strike granted.

hrough the side lines of said pretended Ocean Wave Lode
ining claim, and when said tunnel had been driven through
aid pretended Ocean Wave and Little Mary Lode mining
laims, it was distant from the mouth or portal thereof about
175 feet; that in running said tunnel through said pre-
tended Ocean Wave and Little Mary lode- and lode
5 mining claims the defendant drove the same a dis-
tance of about six hundred and twenty-five feet; that
he same was driven through said pretended Ocean Wave
nd Little Mary Lode mining claims with the full knowledge
nd consent of the plaintiff at the great cost and expense as
bove set forth; that said tunnel was so driven through said
retended lode mining claims more than a year prior to the
ommencement of the above entitled action, without any pro-
est or objection made by the plaintiff or its officers, em-
loyés, or agents; but that the driving of said tunnel was
cquiesced in by the plaintiff, its officers, servants, and em-
loyés; and that after driving said tunnel through and across
aid pretended Ocean Wave and Little Mary Lode mining
laims, the defendant continued the prosecution of its said
unnel and drove the same to a distance of about twenty-two
undred feet and until it reached and penetrated the territory
hat is claimed by the Portland Gold Mining Company, and
t was after said tunnel had reached said distance that the
laintiff instituted the above entitled action, and the same
was then instituted by the plaintiff because, for the reason,
nd on account of the matters and things hereinafter recited
and set forth.

Sixteenth. Further answeriag it alleges that, at a point dis-
tant from the mouth or portal of said tunnel, and in and
upon the line thereof about nineteen hundred and thirty-one
feet, and upon the ground embraced within the surface
boundaries of the location of said tunnel, and within the lo-
cation of the bore thereof, which location of said tunnel was
made long prior to any location upon said territory by any
other person or persons, the defendant, in driving its said
tunnel discovered, uncovered, and disclosed a vein and lode
in rock in place bearing gold, silver, and other precious
metals, which said vein entered said tunnel and was parallel
to the line of said tunnel for a distance of more than five
hundred feet, and is still within said tunnel and within the
breast thereof; that the same is now on the line and bore
thereof near the south line of said tunnel; that said tunnel
is at present driven into the mountain for a distance slightly
exceeding twenty-two hundred feet, and is through and be-
yond the easterly side line of said pretended Ocean Wave
Lode mining claim about eleven hundred feet; that said vein
is intersected, uncovered, and discovered in said tunnel as
above set forth, and is described as the Uinta Tunnel No. 23
lode, and is a cross lode to any lode ever uncovered and dis-

1901, Dec. 6. Motion to strike granted.

covered in said territory by any person or persons; and that the same was never uncovered or discovered by any person or persons until the same was discovered and cut as aforesaid by said Uinta tunnel.

66 Seventeenth. It alleges that in driving said tunnel it has followed said cross lode by it discovered as aforesaid upon territory which was segregated and marked and upon ground appropriated by said tunnel location parallel in location thereto, as it had full right and authority to do in virtue and by right of section 2336 Revised Statutes of the United States; that it located said cross lode by calling it Uinta Tunnel No. 23 lode and mining claim, and by placing at the mouth of said tunnel in a conspicuous place a location certificate showing the general course of said lode and the number of feet claimed on each side of the discovery thereof together with a description thereof showing the date of discovery, the date of location, the number of feet claimed as aforesaid, and the name of the locator thereof, to wit, the Uinta Tunnel Mining and Transportation Company; that it afterwards caused a location certificate thereof to be filed in the office of the clerk and recorder of El Paso county, Colorado, in Book 278, at page — records of said clerk and recorder and claimed by the location thereof from point of discovery thereof running twelve hundred feet southerly and three hundred feet northerly; that said cross lode is at the present time disclosed and uncovered and appears in the breast of said tunnel running almost parallel with the course of said tunnel; that under and by virtue of the Revised Statutes of the United States hereinabove referred to, and in, under, and by virtue of the terms of section 2336 thereof, this defendant has the right to own, possess, and enjoy said cross lode so by it uncovered, and discovered as aforesaid, and to mine, extract, remove, and sell the ores therefrom; and that said vein so uncovered and disclosed as aforesaid and now appearing at the breast of said tunnel is a well-defined gold and silver bearing lode of vein in rock in place, between the walls of rock, and is valuable for mining and for the minerals therein contained; that said cross lode by it discovered as aforesaid was never uncovered, disclosed, or discovered by the plaintiff in any workings upon said pretended Ocean Wave and Little Mary Lode mining claims, whether done by said plaintiff or any other person or persons whomsoever; that the defendant has claimed and still claims the right to own, possess, and operate, said lode as of the date, or by virtue of said location of said Uinta tunnel, to wit, of the thirteenth day of January, A. D. 1892, as was set forth and claimed in and by virtue of said location certificate thereof, hereinbefore described and by virtue of said notice posted at the mouth of said Uinta tunnel, as hereinbefore alleged; that said vein so uncovered and disclosed as

1901, Dec. 6. Motion to strike granted.

aforesaid does not outcrop or appear at the surface nor was the same known to exist at the time of the location of said Uinta tunnel, or until the same was discovered by this
67 defendant as it was discovered by it on or about the eighteenth day of December, A. D. 1897; that the defendant, under and by virtue of said discovery has the right to mine, extract, and sell the ores and minerals therefrom, and has the right to mine, extract, and sell ores and minerals from said vein over, through, and along said tunnel as said tunnel entered along and across said pretended Ocean Wave and Little Mary Lode mining claims; that the defendant claims the right to use the bore of said tunnel by reason of the facts aforesaid as it penetrates said Little Mary lode and lode mining claim, and across the same as hereinabove stated, and as said tunnel likewise penetrates through and across said pretended Ocean Wave lode and lode mining claim as hereinabove stated; that the plaintiff by permitting and allowing this defendant to expend more than the sum of one hundred and thirty-five thousand dollars ($135,000) as aforesaid in reaching, uncovering, and discovering said ore body, has no right to interfere with this defendant in operating its tunnel over, through, and along said pretended Ocean Wave and Little Mary lode- and lode mining claims; but on the contrary the plaintiff by its conduct and actions in the premises as hereinbefore recited and set forth, has permitted and allowed this defendant to expend said large sums of money and has permitted and allowed it so to proceed with said tunnel through and across said pretended Ocean Wave and Little Mary lode- and lode mining claims, until the same has ripened into such a license and permission to so cross said pretended Ocean Wave and Little Mary lode- and lode mining claims, that the defendant cannot now be disturbed in its use of said tunnel.

Eighteenth. It alleges that at a point distant from the mouth or portal of said tunnel, and in and upon the line thereof two thousand one hundred and two feet, upon the ground embraced within the surface boundaries of the location of said Uinta Tunnel location and within the bore thereof, which location of said tunnel was made long prior to any location upon said territory by any other person or persons whatever; that in driving said tunnel this defendant discovered, uncovered, and disclosed a vein and lode in rock in place, which carries gold, silver, and other precious metals on the twenty-third day of December, A. D. 1897, which said vein was cut, crossed, intersected, and penetrated by said tunnel and said vein so discovered as aforesaid had been segregated from the public domain of the United States, and located and appropriated by said Uinta tunnel and tunnel site, and is upon ground that was appropriated by said Uinta Tunnel location long prior to any other location, or attempted

1901, Dec. 6. Motion to strike granted.

1901, Dec. 6. Motion to strike granted.

or pretended location thereof; that this defendant lo-
68 cated said vein by calling the same Uinta Tunnel No. 24 lode, and placed and erected at the mouth of said tunnel in a conspicuous place a location certificate or notice thereof, setting forth and showing the general course of said lode, the number of feet claimed on each side of said discovery thereof, together with a description thereof showing the date of discovery, the date of location, the number of feet claimed as aforesaid, and the name of the locator thereof, to wit, the Uinta Tunnel Mining and Transportation Company; that it afterwards caused the location certificate thereof to be filed in the office of the clerk and recorder of El Paso county, Colorado, in Book 278, at page — among the records in the office of said clerk and recorder, and claimed by the location thereof from the point of discovery thereof running northerly seven hundred and fifty feet, and southerly seven hundred and fifty feet; that said discovery of said Uinta Tunnel No. 24 lode was made on the twenty-third day of December, A. D. 1897, in full conformity with the laws of the United States and of the State of Colorado, in reference to such locations; that a location certificate thereof was made in duplicate, one of which certificates was posted in a conspicuous place near the mouth of said tunnel, and the other recorded in the office of the clerk and recorder of El Paso county, Colorado, as aforesaid, on the second day of March, A. D. 1898; that said Uinta Tunnel No. 24 lode and the vein therein discovered as aforesaid does not outcrop, apex, or appear on the surface of the ground at any point whatever; and that this defendant has claimed and has the right to own, possess, operate, and enjoy said lode, as of the date and by virtue of the location of said Uinta Tunnel No. 24 lode, to wit, on the thirteenth day of January, A. D. 1892, and so sets forth and claims in and by virtue of said location certificate thereof hereinbefore described, and by virtue of said notice posted at the mouth of said Uinta Tunnel No. 24 lode, as hereinbefore alleged; that, under and by virtue of said discovery, it has the right to mine, extract, and sell the ores and minerals therefrom, and has the right to mine, extract, and sell the ores and mineral from said vein, and has the right to remove said ores and minerals by it mined and extracted through and along said tunnel where said tunnel enters said pretended Little Mary lode and lode mining claim, and across said pretended Little Mary lode and lode mining claim, as well as across and along said pretended Ocean Wave lode and lode mining claim; that the defendant claims the right to use the bore of said tunnel through and across said pretended Ocean Wave and Little Mary Lode mining claims by reason of the facts aforesaid, and that the plaintiff by permitting and allowing this defendant to spend more than the

sum of one hundred and thirty-five thousand dollars
69 ($135,000.00) as aforesaid in reaching, uncovering, and discovering said ore body, has no right to interfere with the defendant in operating its tunnel over, through, and along said pretended Ocean Wave and Little Mary lode- and lode mining claims, but that on the contrary the plaintiff, by its conduct and actions in the premises as hereinabove recited and set forth, has permitted and allowed the defendant to expend said sum of one hundred and thirty-five thousand dollars ($135,000) and has permitted and allowed the defendant to so proceed with said tunnel through and across said pretended Ocean Wave and Little Mary lode- and lode mining claims until the same has ripened into such a license and permission as entitles the defendant to use its said tunnel as it penetrates said pretended Ocean Wave and Little Mary lode- and lode mining claim-, and that said license and permission is such that the defendant can not be disturbed herein.

Nineteenth. It alleges that at a point in said tunnel from the mouth or portal thereof about two thousand one hundred and eighteen feet, upon ground embraced within the surface boundaries of said Uinta tunnel and within the bore thereof, which location of said tunnel was prior to any other location made on said territory aforesaid, the defendant, in driving and prosecuting said tunnel, uncovered, and discovered on the sixth day of January, A. D. 1899, a well-defined lode or vein, in rock in place, which carried gold, silver, and other precious metals, which said vein was cut, crossed, intersected, and penetrated by said tunnel; that said vein so discovered as aforesaid has been segregated from the public domain of the United States, and located and appropriated by the Uinta tunnel location long prior to any location or attempted or pretended location thereof; that this defendant located said vein by calling the same Uinta Tunnel No. 25 lode, and placed and erected at the mouth of said tunnel in a conspicuous place, a location certificate or notice thereof setting forth and showing the general course of said lode, the number of feet claimed on each side of said discovery thereof, together with a description thereof showing the date of discovery, the date of location, the number of feet claimed as aforesaid, and the name of the locator, to wit, the Uinta Tunnel Mining and Transportation Company; that it afterwards caused a location certificate thereof to be filed in the office of the clerk and recorder of El Paso county, Colorado, in Book 278, at page — among the records in the office of said clerk and recorder, and claimed by the location thereof from the point of discovery thereof, running seven hundred and fifty feet in a northerly direction and seven hundred and fifty feet in a southerly direction; that said discovery of said

1901, Dec. 6. Motion to strike granted.

1901, Dec. 6. Motion to strike granted.

70 Unita Tunnel No. 25 lode was had and made on the sixth day of January, A. D. 1897, in full conformity with the laws of the United States and of the State of Colorado, in reference to such locations; that a location certificate thereof was made in duplicate, one of which certificates was posted in a conspicuous place at the mouth of said tunnel as aforesaid and the other thereof recorded in the office of the clerk and recorder of El Paso county, Colorado, as aforesaid, on the second day of March, A. D. 1898; that said Uinta Tunnel No. 25 lode and vein thereof as aforesaid does not outcrop, apex, or appear at the surface, or at any other point whatever; that under and by virtue of said discovery, this defendant has the right to mine, extract, remove, and sell the ores and minerals therefrom; that said vein was uncovered and discovered as aforesaid and known as and called Uinta Tunnel No. 25 lode, is a well defined vein between two walls, in rock in place and carries gold silver, and other precious metals; that said lode was never uncovered or discovered by the plaintiff or any other person or persons whomsoever; and that this defendant has claimed and has the right to own, possess, operate, and enjoy said lode as of the date by virtue of the location of said Uinta tunnel, to wit, the thirteenth day of January, A. D. 1892, and so sets forth and claims in and by virtue of said location certificate thereof, hereinbefore described, and by virtue of said notice posted at the mouth of said Uinta tunnel as hereinbefore alleged; that it has the right to remove said ores and minerals, by it mined and extracted from said Uinta Tunnel No. 25 lode, through and along said tunnel where said tunnel enters said pretended Little Mary lode and lode mining claim and across said pretended Little Mary lode and lode mining claim, as well as along and across said pretended Ocean Wave lode and lode mining claim; that it claims the right to use the bore of said tunnel, through, and across said pretended Ocean Wave and Little Mary lode- and lode mining claims, by reason of the facts aforesaid; that the plaintiff by permitting and allowing this defendant to expend more than the sum of one hundred and thirty-five thousand dollars ($135,000) as aforesaid in reaching, uncovering, and discovering said ore body, has no right to interfere with this defendant in operating its tunnel over, through, and along said pretended Ocean Wave and Little Mary lode- and lode mining claims; but on the contrary the plaintiff by its conduct and actions in the premises hereinabove recited and set forth, has permitted and allowed the defendant to expend the sum of more than one hundred and thirty-five thousand dollars ($135,000) and has permitted and allowed the defendant to so proceed with said tunnel, through, and across said pretended Ocean Wave and Little Mary lode mining claims, until the same has ripened into such a license and permission as entitles

71 the defendant to use its said tunnel as it penetrates said pretended Ocean Wave and Little Mary lode- and lode mining claims; and that said license and permission is such that the defendant can not be disturbed therein.

Twentieth. It alleges that at a point in said tunnel distant from the mouth or portal about two thousand one hundred and eighty feet, upon ground embraced within the surface boundaries of said tunnel and within the bore thereof, which location of said tunnel was prior to any other location made on said territory this defendant, in driving and prosecuting its said tunnel uncovered and discovered, on the fifteenth day of December, A. D. 1897, a well defined lode or vein in rock in place, which carries gold, silver and other precious metals, which said vein was cut, crossed, intersected, and penetrated by said tunnel; that said vein so discovered as aforesaid had been segregated from the public domain of the United States, and located and appropriated by said location of said Uinta tunnel and tunnel site, and is upon ground that was appropriated by said Uinta Tunnel location long prior to any other location or attempted or pretended location thereof; that this defendant located said vein by calling the same Uinta Tunnel No. 26 lode, and placed and erected at the mouth of said tunnel in a conspicuous place a location certificate or notice thereof, setting forth and showing the general course of said lode, the number of feet claimed on each side of said discovery thereof, together with a description thereof, showing the date of discovery, the date of location, the number of feet claimed as aforesaid, and the name of the locator, to wit, the Uinta Tunnel Mining and Transportation Company; that it afterwards caused the location certificate thereof to be filed in the office of the clerk and recorder of El Paso county, Colorado in Book 278, at page — among the records in the office of said clerk and recorder; that it claimed by the location thereof and upon the discovery thereof one thousand feet running in a northerly direction and five hundred feet in a southerly direction from the point of discovery thereof; that said discovery of said Uinta Tunnel No. 26 lode was had and made on the fifteenth day of December, A. D. 1897, in full conformity with the laws of the United States and of the State of Colorado, in reference to such locations; that a location certificate thereof was made in duplicate, one of which certificates was posted in a conspicuous place at the mouth of said tunnel as aforesaid, and the other thereof recorded in the office of the clerk and recorder of El Paso county, Colorado, as aforesaid, on the second day of March, A. D. 1898; that said Uinta Tunnel No. 26 lode does not outcrop, apex, or appear at

72 the surface of the ground at any point whatever; that said vein uncovered and discovered as aforesaid, and known as and called Uinta Tunnel No. 26 lode, is a well defined vein between two walls of rock in place, and carries

1901, Dec. 6. Motion to strike granted.

gold, silver, and other precious metals; that said lode was never uncovered or discovered by the plaintiff or any other person or persons whomsoever; that this defendant further claims that it has the right to own, possess, operate, and enjoy said lode as of the date and by virtue of the location of said tunnel, to wit, on the thirteenth day of January, A. D. 1892, that by virtue of said location certificate thereof hereinbefore described, and by virtue of said notice posted at the mouth of said tunnel as hereinbefore alleged, it has the right to remove said ores and minerals, by it mined and extracted from said Uinta Tunnel No. 26 lode, through and along said tunnel where said tunnel enters said pretended Little Mary lode and lode mining claim and across said Little Mary lode and lode mining claim, as well as along and across said pretended Ocean Wave lode and lode mining claim; that this defendant claims the right to use the bore of said tunnel, through, and across said pretended Little Mary and Ocean Wave lode and lode mining claim- by reason of the facts aforesaid; that the plaintiff by permitting and allowing this defendant to expend more than the sum of one hundred and thirty-five thousand dollars ($135,000) as aforesaid, in reaching, uncovering, and discovering said ore body, has no right to interefere with this defendant in crossing over, through, and along said pretended Ocean Wave and Little Mary lode- and lode mining claims; but on the contrary the plaintiff by its conduct and actions in the premises as hereinbefore set forth, has permitted and allowed the defendant to expend said large sum of money, and has permitted and allowed the defendant to so proceed with its said tunnel through and across said pretended Ocean Wave and Little Mary lodes and lode mining claims, until the same has ripened into a license and permission such as entitled the defendant to use its said tunnel as it penetrated said pretended Ocean Wave and Little Mary lodes and lode mining claims; and that said license and permission is such that the defendant can not be disturbed therein.

1901, Dec. 6. Motion to strike granted.

Twenty-first. It further avers that the patent of the United States issued for said Ocean Wave and Little Mary lodes and lode mining claims was issued subject to the acts of Congress in reference to tunnel rights and subject to the laws of the State of Colorado in reference to the right to run tunnels through ground that may be patented, for the purpose of reaching territory that belong- to tunnel owners beyond such patented claims, and subject to the rights which the de-
73 fendant The Uinta Tunnel Mining and Transportation Company and its grantors, had acquired by reason of the location of said Uinta tunnel, and in and to any and all lodes, veins, and mining claims that it might cut or discover in driving said tunnel, as is guaranteed to the locator of said tunnel under and by virtue of section 2323 of the Revised

Statutes of the United States; that the pretended discovery alleged and pretended to have been made in and upon said Ocean Wave and Little Mary lodes and lode mining claims, and by virtue of which the plaintiff claims the right to patent the same under the laws of the United States, was not made until long after the location of said Uinta tunnel, and at the time said pretended locations were made said locators thereof were advised and knew that said tunnel had been located and had been and was being prosecuted with due diligence and in strict compliance with the terms and conditions of the Statutes of the United States and of the State of Colorado, which authorize and provide for the location and prosecution of such tunnels and which defines and determines the rights pertaining thereto; and that said pretended Ocean Wave and Little Mary Lode mining claims, so far as the same may be now claimed and possessed by said plaintiff, were taken and are held subject to the rights of this defendant as owner of said Uinta tunnel, located in accordance with section 2323 of the Revised Statutes of the United States, and also subject to the rights of this defendant to cross said claims, and to drive drifts therein, and to follow said lode claims as located by this defendant and to reach lode claims so owned by this defendant, as hereinbefore and hereinafter stated.

1901, Dec. 6. Motion to strike granted.

Twenty-second. It avers that from about twenty-two hundred and fifty feet from the mouth or portal of said Uinta tunnel, said tunnel run along, through, and across the Black Jasper lode; that on the thirteenth day of January, A. D. 1897, Vance Carothers, who was then and there a citizen of the United States over the age of twenty-one years, entered upon the unoccupied public mineral domain of the United States and located what is known as said Black Jasper Lode mining claim; that the same was marked by six substantial posts, one at each corner and one at the center of each side line thereof, which posts were hewed and marked on the sides in towards the claim; that a discovery shaft was sunk thereon to a depth of more than ten feet from the lowest point of the rim thereof at the surface, which disclosed a well defined vein which carried gold and other precious metals therein; that at the point of said discovery the locator placed a plain sign or notice containing the name of the lode, the
71 date of the discovery, the name of the locator, and the general course thereof; that afterwards, on the second day of February, A. D. 1897, said Vance Carothers caused a location certificate to be made of said Black Jasper lode, which contained the name of the lode, the name of the locator, the date of the location, and described the same by metes and bounds; that said location certificate was afterwards on the second day of February, 1897, duly recorded in the office of the clerk and recorder of El Paso county, Colorado; that this defendant, by mesne conveyances from the locator and owner

1901, Dec. 6. Motion to strike granted.

of said Black Jasper Lode mining claim, became the owner thereof and is now such owner; that said tunnel enters said Black Jasper lode as aforesaid at about twenty-two hundred and fifty feet from the mouth or portal thereof, and continues along and through said Black Jasper lode as located to the breast thereof; that this defendant has the right, under the laws of the State of Colorado and the acts of Congress, to enter, through, and along said Ocean Wave and Little Mary Lodes and lode mining claims for the purpose of reaching the lode claims owned by this defendant beyond the mouth or portal of said tunnel, and beyond said Ocean Wave and Little Mary Lodes and lode mining claims; that said Ocean Wave and Little Mary Lodes and lode mining claims lie between the mouth or portal of said tunnel and said Black Jasper Lode mining claim and between said Uinta Tunnel No. 23 lode and mining claim and said Uinta Tunnel No. 24 lode and mining claim and said Uinta Tunnel No. 25 lode and mining claim and said Uinta Tunnel No. 26 lode and mining claim, from which said last lode and mining claim this defendant has been shipping rich and valuable ore; that by reason of the ownership of said lode and mining claims last above described and by virtue of the laws of the State of Colorado, and the acts of Congress, this defendant has the right to cross through and beyond said Ocean Wave and Little Mary Lodes and lode mining claims for the purpose of reaching said lode mining claims which are owned by and which belong to this defendant.

Wherefore, the defendant prays judgment against the plaintiff that it may have the right to use and operate its said tunnel through said pretended Ocean Wave and Little Mary Lodes and lode mining claims as said tunnel is now constructed and operated.

Second. For judgment declaring that the defendant has the right to mine and extract ore by it uncovered and discovered in said Uinta Tunnel No. 23 lode, Uinta Tunnel No. 24 lode, Uinta Tunnel No. 25 lode, and Uinta Tunnel No. 26 lode, and to haul the same through its said tunnel through, across, and along said Ocean Wave and Little Mary Lodes and lode mining claims, as the same are now penetrated by said tunnel.

75 Third. For its costs of suit in this behalf expended or incurred.

C. J. HUGHES, JR., AND
SCOTT ASHTON,
Attorneys for the Defendant.

STATE OF COLORADO, } ss.:
County of Teller, }

H. E. Woods being duly sworn, on oath deposes and says that he

is the president of the Uinta Tunnel Mining and Transportation Company, the above named defendant; that he has read the above and foregoing answer and knows the contents thereof, and that the matters and things therein stated are true according to affiant's best knowledge and belief.

H. E. WOODS.

Subscribed and sworn to before me this ninth day of February, A. D. 1900.

My commission as a notary public will expires April 14th, 1903.

[SEAL.] WILLIAM D. HATTON,
Notary Public.

And be it remembered, that afterwards, and on, to wit, the twenty-fifth day of June, A. D. 1901, the plaintiff above named filed its motion in the above entitled cause, in the court above entitled, to strike from the answer of the defendant certain parts and portions thereof, which said motion is in the words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States within and for said District.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING Company, Plaintiff,
vs.
THE UINTA TUNNEL MINING AND TANSPORTATION Company, Defendant. } No. 3658.

The plaintiff now comes and moves to strike from the defendant's answer to plaintiff's complaint herein, the following:

1. That part of the fourth paragraph thereof, commencing with the words "which patent" in the fourth line of the second page and ending with the words "Little Mary Lode mining claim" in the twelfth line of the same page, because the same does not constitute an answer to the complaint or serve to do so, but is wholly irrelevant redundant, immaterial, and insufficient.

76 2. All that part of the fifth paragraph beginning with the word "and denies" in the fourth line thereof and ending with the word- "claim" at the conclusion of said paragraph, because the same does not constitute an answer to the said complaint or tend to do so, but is wholly irrelevant, redundant, immaterial, and insufficient.

3. All that part of the sixth paragraph of said answer which begins with the words "but the defendant alleges" in the sixth line of said paragraph, down to the end thereof, because the same does

not constitute an answer to said complaint or any part thereof, but is wholly irrelevant, redundant, immaterial, and insufficient.

4. All of the tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, and twenty-second paragraphs of said answer, because the same or any of them do not constitute an answer to said complaint or tend to do so, but are each and all wholly irrelevant, redundant, immaterial and insufficient.

THOMAS, BRYANT, AND LEE,
Att'ys for Pl'ff.

Be it remembered, that afterwards, and on, to-wit, the sixth day of December, A. D. 1901, the motion to strike from the answer of defendant certain portions thereof having theretofore come on to be heard, the following order was entered by the court, to-wit:

THE CREEDE & C. C. M. & M. Co.
vs.
THE U. T. M. & T. Co. } 3658.

The motion to strike from the answer of the defendant certain portions thereof having heretofore come on to be heard, and having been argued by counsel, H. H. Lee, Esquire, appearing as attorney for the plaintiff, and C. J. Hughes, Jr., Esquire, appearing as attorney for the defendant, and having been taken under advisement and the court having considered the same and being now fully advised in the premises;

It is ordered by the court, for good and sufficient reasons to the court appearing, that said motion be and the same is hereby granted, and that all those portions of the answer commencing with the words "which patents," in the fourth line of the second page, and ending with the words "Little Mary Lode mining claim," in the twelfth line of the same page; and all that part of the fifth paragraph commencing with the words "and denies" in the fourth
77 line thereof, and ending with the word "claim" at the conclusion of said paragraph. All that part of the sixth paragraph of said answer which begins with the words "but the defendant alleges" in the sixth line of said paragraph, down to the end thereof. All the tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first and twenty-second paragraphs of said answer be and the same are hereby stricken from the answer to the amended complaint herein.

Friday Dec. 6th, 1901.

To the order sustaining said motion, and striking from said answer of the defendant that part of the fourth paragraph thereof commencing with the words "which patent" in the fourth line of the second page, and ending with the words "Little Mary Lode mining claim" in the twelfth line of the same page, and indicated on the

margin of said answer by red lines, the defendant then and there at that time duly excepted.

To the order sustaining said motion striking from said answer of the defendant all that part of the fifth paragraph commencing with the words "and denies" in the fourth line thereof, and ending with the word "claim" at the conclusion of said paragraph, and indicated on the margin of said answer by red lines, the defendant then and there and at that time duly excepted.

To the order sustaining said motion striking from said answer of the defendant all that part of the sixth paragraph of said answer, beginning with the words "but the defendant alleges" in the sixth line of said paragraph, down to the end thereof, and indicated on the margin of said answer by red lines the defendant then and there and at that time duly excepted, and,

To the order sustaining said motion striking from said answer of the defendant all of the tenth paragraph thereof, the defendant then and there and at that time duly excepted; to the order sustaining said motion striking from said answer of the defendant all of the eleventh paragraph thereof, the defendant then and there and at that time duly excepted. To the order sustaining said motion striking from said answer of the defendant all of the twelfth paragraph thereof, the defendant then and there and at that time duly excepted. To the order sustaining said motion striking from said answer of the defendant all of the thirteenth paragraph thereof, the defendant then and there and at that time duly excepted.

78 To the order sustaining said motion striking from said answer of the defendant all of the fourteenth paragraph thereof, the defendant then and there and at that time duly excepted.

To the order sustaining said motion striking from said answer of the defendant all of the fifteenth paragraph thereof, the defendant then and there and at that time duly excepted. To the order sustaining said motion striking from said answer of the defendant all of the sixteenth paragraph thereof, the defendant then and there and at that time duly excepted. To the order sustaining said motion striking from said answer of the defendant all of the seventeenth paragraph thereof, the defendant then and there and at that time duly excepted. To the order sustaining said motion striking from said answer of the defendant all of the eighteenth paragraph thereof, the defendant then and there and at that time duly excepted. To the order sustaining said motion striking from said answer of the defendant all of the nineteenth paragraph thereof, the defendant then and there and at that time duly excepted. To the order sustaining said motion striking from said answer of the defendant all of the twentieth paragraph thereof, the defendant then and there and at that time duly excepted. To the order sustaining said motion striking from said answer of the defendant all of the twenty-first paragraph thereof, the defendant then and there and at that time duly excepted. To the order sustaining said motion striking from said answer of the defendant all of the twenty-second paragraph

thereof, the defendant then and there and at that time duly excepted.

——— ———,
Attorneys for Defendants.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court of the United States within and for the District of Colorado.

THE CREEDE AND CRIPPLE CREEK MINING AND Milling Company, Plaintiff,
vs.
THE UINTA TUNNEL, MINING, AND TRANSPORTATION Company, Defendant.
} Law. No. 3658.

And forasmuch as the foregoing matters do not appear fully of record in the said cause, the foregoing bill of exceptions is hereby allowed, signed, sealed, and filed, as a part of the records of
79 such cause, within the time heretofore granted by this court.

Done at Denver, Colorado, this fourth day of February, A. D. 1902.

MOSES HALLETT, *Judge.*

——— ———,
Attorneys for the Plaintiff.

Indorsed: No. 3658. In U. S. circuit court. The Creede & Cripple Creek Mining and Milling Company *vs.* The Uinta Tunnel Mining and Transportation Company. Bill of exceptions on order striking part of answer. Filed Feb. 4, 1902. Robert Bailey, clerk. Charles J. Hughes, Jr., defendant's attorney.

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

In the Circuit Court.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING Company, Plaintiff,
vs.
THE UINTA TUNNEL MINING AND TRANSPORTATION Company, Defendant.
} No. 3658.

Bill of Exceptions.

Be it remembered that the above entitled cause coming on for trial before the Honorable John A. Riner, district judge of the dis-

ict of Wyoming, assigned to the district of Colorado, on the 29th ıy of January, A. D. 1902, at the hour of 2 o'clock p. m., the same ing one of the regular juridical days of the November term of said ourt, the plaintiff appearing by Messrs. C. S. Thomas and H. H. ee, its attorneys, and the defendant by Scott Ashton, Esquire, its torney, the following proceedings were had:

Thereupon counsel for plaintiff made the following statement:

Mr. LEE: If your honor please, under our construction of this case, is proceeding is purely *pro forma*. We contend that every issue the case has been already determined by this court in passing pon motions affecting the pleadings, so that in making a statement the case I think that the court would be more interested in it than erhaps the jury because we shall contend that there will be noth- g left to the jury except to bring in a verdict in keeping with the instructions of the court.

Thereupon after discussion, the court stated as follows:

The COURT: So far as this court is concerned, we would feel ound by Judge Hallett's rulings.

Thereupon, the plaintiff, to maintain the issues on its part, intro- uced the following evidence, to wit:

Plaintiff's Testimony.

Thereupon counsel for plaintiff offered a certified copy of the loca- on certificate of the Ocean Wave Lode mining claim, same being arked Exhibit 1, complainant's proofs. (See page 33.)

To which offer counsel for defendant objected as being incompe- nt, immaterial, and irrelevant at this time, because there is no roof that there was a discovery of ore in the discovery shaft or else- here within the surface boundaries of the Ocean Wave Lode min- g claim, and for the further reason that it is alleged in the peti- on that there was such a discovery, which is denied in the answer, nd there is no proof thereof.

Which objection the court overruled, allowing said Exhibit 1 to e received in evidence.

To which ruling of the court counsel for defendant then and there ıly excepted.

Thereupon counsel for plaintiff offered in evidence a certified copy f the location certificate of the Little Mary Lode mining claim, same eing marked Exhibit 2, complainant's proofs. (See page 37.)

To which offer counsel for defendant objected as being incompe- nt, immaterial, and irrelevant at this time, because there is no roof that there was a discovery of ore in the discovery shaft or else- here within the surface boundaries of the Little Mary Lode mining aim, and for the further reason that it is alleged in the petition at there was such a discovery, which is denied in the answer, and here is no proof thereof.

Which objection the court overruled, allowing said Exhibit 2 to e received in evidence.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for plaintiff offered in evidence certified copies of seven deeds and three original deeds, ten deeds in all, showing the passing of the title of the Ocean Wave and Little Mary Lode mining claims from the locators to the plaintiff in this case,
81 same being marked respectively, Exhibits 3 (page 41), 4 (page 47), 5 (page 52), 6 (page 57), 7 (page 62), 8 (page 67), 9 (page 72), 10 (page 77), 11 (page 82), and 12 (page 86), complainant's proofs.

To which offer counsel for defendant objected, objecting to each exhibit separately as being incompetent, immaterial, and irrelevant at this time, because there is no proof that there was a discovery of ore in the discovery shaft or elsewhere within the surface boundaries of the Little Mary and Ocean Wave Lode mining claims, and for the further reason that it is alleged in the petition that there was such discovery, which is denied in the answer, and there is no proof thereof.

Which objection the court overruled, allowing said Exhibits 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, to be received in evidence.

To which ruling of the court counsel for defendant then and there duly excepted.

The COURT: You concede, Mr. Ashton, that these deeds upon their face show a continuous title from the locators to the plaintiff?

Mr. ASHTON: Yes, sir.

Thereupon, counsel for plaintiff offered in evidence certified copy of the amended location certificate of the Ocean Wave Lode mining claim, same being marked Exhibit 13, complainant's proofs. (See page 90.)

To which offer counsel for defendant objected as being incompetent, immaterial, and irrelevant at this time, because there is no proof that there was a discovery of ore in the discovery shaft or elsewhere within the surface boundaries of the Ocean Wave Lode mining claim, and for the further reason that it is alleged in the petition that there was such a discovery, which is denied in the answer, and there is no proof thereof.

Which objection the court overruled, allowing said Exhibit 13 to be received in evidence.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for plaintiff offered in evidence certified copy of the amended location certificate of the Little Mary Lode mining claim, same being marked Exhibit 14, complainant's proofs. (See page 95.)

To which offer counsel for defendant objected as being incompetent, immaterial, and irrelevant at this time, because there is no proof that there was a discovery of ore in the discovery shaft or elsewhere within the surface boundaries of the Little Mary
82 Lode mining claim, and for the further reason that it is alleged in the petition that there was such a discovery, which is denied in the answer and there is no proof thereof.

Which objection the court overruled, allowing said Exhibit 14 to be received in evidence.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for plaintiff offered in evidence the patent of the United States to The Creede and Cripple Creek Mining and Milling Company plaintiff herein, for the Ocean Wave and Little Mary Lode mining claims, survey No. 8192, same being marked Exhibit 15, complainant's proofs. (See page 100.)

To which offer counsel for defendant objected as being incompetent, immaterial, and irrelevant, for the reason that the proper foundation has not been predicated to introduce said patent in evidence, in this, that there has been no proof offered of the discovery of mineral in either of the discovery shafts, or elsewhere, upon the Little Mary and Ocean Wave Lode mining claims. Which objection the court overruled, allowing said Exhibit 15 to be received in evidence.

To which ruling of the court counsel for defendant then and there duly excepted.

And this was all the evidence produced or offered by the plaintiff.

Thereupon the defendant, to maintain the issues on its part, introduced the following evidence, to wit:

Defendant's Testimony.

L. W. DAVIS, a witness produced on behalf of the defendant, being duly sworn in answer to interrogatories propounded to him testified as follows:

Direct examination.

By Mr. ASHTON:

Q. What is you name?
A. L. W. Davis.
Q. What is your business?
A. Mining engineer.
Q. Where do you reside?
A. Victor, Colorado.
Q. How long have you resided there, Mr. Davis?
A. Since 1894.
Q. How long have you been a mining engineer?
A. About fourteen years.
Q. I will ask you if you are acquainted with Uinta Tunnel No. 1 lode, the Uinta Tunnel, the Little Mary and Ocean Wave lodes and the Black Jasper lode in the Cripple Creek mining district, in the county of Teller and State of Colorado.
A. I am.
83 Q. How long have you been acquainted with those properties?

A. I have known the Tunnel, the Little Mary and the Ocean Wave since about 1893, or '4. The Black Jasper I have known ever since about the time of its location, I think 1897.

Q. Will you point upon the map (Exhibit A) where the Uinta Tunnel No. 1 lode is?

A. (Indicates same.) On this map north lies in the direction the pointer points up (indicating) and south towards the bottom. The Uinta Tunnel No. 1 lode is at this point here (indicating) survey No. 9185.

Q. Where is the face or portal of the Uinta Tunnel?

A. It is the place where I point, located on Uinta Tunnel No. 1 lode.

Q. You mean that it is embraced within the——

A. Surface boundaries.

Q. What is the distance of that tunnel?

A. The bore of the tunnel is driven as I indicate, about 2245 feet.

Q. Where is the breast of the tunnel indicated upon the map?

A. (Indicates.) Inside of the surface boundaries of the Black Jasper.

Q. Where would 3,000 feet from the face of the tunnel to the breast be upon the map?

A. Extended forward?

Q. Yes, sir, a distance of 3,000 feet?

A. (Indicating.) It would be approximately the point where I hold the ends of the pointer, inside of the Black Jasper surface boundaries.

Q. And how far from the westerly end lines of the Black Jasper claim, approximately?

A. Some 700 feet.

Q. How far is it from the face of the tunnel to the westerly side line of the Little Mary Lode mining claim?

A. About 554 feet from the portal of the tunnel to the west side line of the Little Mary.

Q. Face or portal?

A. From the portal of the tunnel to the westerly side line of the Little Mary is about 554 feet.

Q. What is the distance of the tunnel across the Little Mary and Ocean Wave lodes?

A. Approximately 593 feet.

Q. How far is it from the easterly side line of the Ocean Wave as far as the tunnel was driven—the distance that the tunnel was driven?

A. Beyond the east side line?

Q. Beyond the east side line of the Ocean Wave until it was stopped?

84 A. The tunnel at the present time is in distance about 1,098 feet from the easterly side line of the Ocean Wave lode to the present face of the tunnel.

Q. I will ask you if that map (Exhibit A) was made by you from

an actual survey of the claims indicated upon the map upon the ground.

A. Principally from that; also from the records to a certain extent.

Q. Does the map correctly show the location of the Uinta Tunnel, the Uinta Tunnel No. 1 lode, the Little Mary, Ocean Wave, and Black Jasper lodes?

A. It does.

Q. Where was the discovery, if you know, of the Uinta Tunnel No. 23 lode.

Objected to as incompetent, immaterial and irrelevant.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Q. Was that discovery made by driving continuously along the bore of the tunnel for over a distance of 600 feet?

Objected to as incompetent, immaterial, and irrelevant, Uinta Tunnel No. 23 lode being some 800 or 900 feet distant from the ground in controversy.

Which objection the court sustained.

To which ruling of the court counsel for the defendant then and there duly excepted.

Thereupon counsel for defendant made the following offer:

To prove by this witness that there was uncovered and discovered in the bore of the tunnel at a point about 750 feet east of the easterly side line of the Ocean Wave lode a vein of mineral in rock in place carrying rich and valuable ores; that that vein was continuous with the bore of the tunnel for a distance of 600 feet; that the discovery of the vein was between two well defined walls and in place; that the ore and mineral therein uncovered and discovered was a blind lode and vein and of great value, carrying gold; that the same had not before that time been discovered by any other person or parties at the surface; that it was upon ground belonging to and within the surface boundaries of the Uinta tunnel and had not been appropriated by any other person or parties prior to the location of the tunnel; that after the discovery thereof there was a proper location made of said lode by the defendant by staking the same and posting at the portal of the tunnel a proper notice and thereafter making and recording a location certificate thereof.

85 To which offer counsel for plaintiff objected as being incompetent, immaterial, and irrelevant, not tending to prove or support any issue in this case.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Q. State if you know Mr. Davis, at what point in the tunnel there was a discovery, if any was made, of the vein or lode known as the Uinta Tunnel No. 24 lode?

Objected to as incompetent, immaterial, and irrelevant.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for defendant made the following offer:

To prove by this witness that there was uncovered and discovered in the bore of the tunnel at a point about 955 feet east of the easterly side line of the Ocean Wave lode a vein of mineral in rock in place carrying rich and valuable ores; that the discovery of the vein was between two well defined walls and in place; that the ore and mineral therein uncovered and discovered was a blind lode and vein and of great value, carrying gold; that the same had not before that time been discovered by any other person or parties at the surface; that it was upon ground belonging to and within the surface boundaries of the Uinta tunnel and had not been appropriated by any other person or parties prior to the location of the tunnel; that after the discovery thereof there was a proper location made of said lode by the defendant by staking the same and posting at the portal of the tunnel a proper notice and thereafter making and recording a location certificate thereof.

To which offer counsel for plaintiff objected as being incompetent, immaterial, and irrelevant, as offering to show geological conditions nearly 1,000 feet distant from the ground in controversy.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Q. Do you know where the discovery was made, if any, in the tunnel of the Uinta Tunnel No. 25 lode?

Objected to as incompetent, immaterial, and irrelevant.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

86 Thereupon counsel for defendant made the following offer:

To prove by this witness that there was uncovered and discovered in the bore of the tunnel at a point about 971 feet east of the easterly side line of the Ocean Wave lode a vein of mineral in rock in place carrying rich and valuable ores; that the discovery of the vein was between two well defined walls and in place; that the ore and mineral therein uncovered and discovered was a blind lode and vein and of great value carrying gold; that the same had not before that time been discovered by any other person or parties at the surface; that it was upon ground belonging to and within

the surface boundaries of the Uinta tunnel and had not been appropriated by any other person or parties prior to the location of the tunnel. That after the discovery thereof there was a proper location made of said lode by the defendant by staking the same, posting at the portal of the tunnel a proper notice and thereafter making and recording a location certificate thereof.

To which offer counsel for plaintiff objected as being incompetent, immaterial, and irrelevant, not tending to support or prove any issue in this case.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Q. State, if you know, Mr. Davis, at what point in the tunnel there was a discovery, if any was made, of the vein or lode known as the Uinta Tunnel No. 26 lode?

Objected to as incompetent, immaterial, and irrelevant.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for defendant made the following offer:

To prove by this witness that there was uncovered and discovered in the bore of the tunnel at a point about 1034 feet east of the easterly side line of the Ocean Wave lode a vein of mineral or rock in place carrying rich and valuable ores; that the discovery of the vein was between two well defined walls and in place; that the ore and mineral therein uncovered and discovered was a blind lode and vein and of great value, carrying gold; that the same had not before that time been discovered by any other person or parties at the surface; that it was upon ground belonging to and within the surface boundaries of the Uinta tunnel and had not been appropriated by any other person or parties prior to the location of the tunnel.

87 That after the discovery thereof there was a proper location made of said lode by the defendant by staking the same and posting at the portal of the tunnel a proper notice and thereafter making and recording a location certificate thereof.

To which offer counsel for plaintiff objected as being incompetent, immaterial, and irrelevant, not tending to support or prove any issue in this case.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for defendant offered in evidence the map heretofore referred to, same being marked Exhibit A, defendant's proofs.

Mr. LEE: I wish to cross-examine the witness before the court passes upon that.

The COURT: You may.

Cross-examination.

By Mr. LEE:

Q. Mr. Davis, do you know what the length of that tunnel was in the month of June, 1897, at the time this suit was begun?

A. No, not at that time.

Q. Do you know what property lies immediately east of the Ocean Wave Lode mining claim?

A. I don't remember what property it is.

Q. Well, properties belonging to the Portland Company lie between the Black Jasper and Ocean Wave claims, do they not?

A. No, I think not, no, sir.

Q. Well, the tunnel in 1897 had not reached the Black Jasper, had it?

A. I don't know as to that.

Q. You have shown the Black Jasper on the map (Exhibit A) with what dimensions?

A. It is 1500 feet in length.

Q. And how many feet in width?

A. About 300.

Q. What is the actual size of the Black Jasper as patented?

A. I don't know that.

Q. This is all patented territory is it not—the most of it covered by the Black Jasper claim really belongs to other claims, does it not?

A. I think it does.

Q. Is it not true that there is only a small fraction of an acre in the Black Jasper claim?

A. That is my understanding.

Q. So that when you show the Black Jasper claim as 1500 feet long and 300 feet wide, it is shown as covering property that belongs to other people rather than this defendant?

A. Yes, sir.

Mr. LEE: I object to the map going in because it does not show the real condition of affairs up there. It seems to me that it
88 ought to be made more specific after the testimony of the witness is given.

The COURT: I think, Mr. Ashton, you ought to designate the particular part of that claim owned by the defendant on the map.

Mr. ASHTON: We claim we have a patent to the Uinta Tunnel No. 1 lode.

The COURT: Yes; but as to the Black Jasper as marked there you can only own a small portion.

Mr. ASHTON: We simply use that (Exhibit A) for the purpose of showing we have territory beyond the Little Mary and Ocean Wave claims, whether small or great. We claim we are entitled to all of it. There is an adverse pending between the Black Jasper

and Fairplay claims for patent and that matter has not yet been determined; it is still pending and undetermined. We claim that the Black Jasper covers the greater portion of the Fairplay claim and that there is very little of the Black Jasper which is not in conflict with the Fairplay.

Mr. LEE: The defendant's contention is that if they have property on the line of their tunnel, under some construction of the United States statutes they have the right-of-way through intervening property to reach that property which belongs to them for the purpose of mining it. If any such construction is possible after what the Supreme Court has said in the Calhoun-Ajax case they certainly should first show they have the property and its location is such that the driving of this tunnel is a necessary pre-requisite to the proper working of the property.

Mr. ASHTON: We are doing the best we can to show we have property beyond the Ocean Wave and Little Mary claims by showing the location of the Black Jasper claim and location certificate. I apprehend this court would not permit us to litigate in this trial who was entitled to the possession as between the Black Jasper and Fairplay claims; that is a matter which has to be determined in some other forum and at some other time. We claim we own it. We have adversed the Fairplay and suit is now pending for the purpose of determining between the Black Jasper and Fairplay claims. I can not at this time prove we have a better and prior possession, nor will the court permit the other side to prove that.

Mr. LEE: I will ask a question.

By Mr. LEE: Is there any part of the unpatented territory covered by the Black Jasper claim that is not in controversy with the Fairplay?

A. Yes, I think there is a small portion of the eastern end that is not in controversy.

89 Q. Is the discovery shaft on the eastern end of the Jasper?

A. No, sir, it is on the western.

Q. The discovery shafts of the Jasper and Fairplay are both upon the same fraction are they not?

A. No. The Fairplay discovery shaft is on the east end of their claim, I think. The Black Jasper discovery shaft is at the point I indicate here.

Q. But the discovery shaft of the Black Jasper is upon territory which is in conflict with the Fairplay?

A. Yes, sir; I so understand.

Mr. LEE: We have no objection to the map (Exhibit A) going in with that explanation.

Thereupon counsel for defendant offered in evidence certified copy of the location certificate of Uinta Tunnel No. 23 lode, same being marked Exhibit B, defendant's proofs. (See page 109.)

To which offer counsel for plaintiff objected as being incompetent, immaterial, and irrelevant, not tending to prove any issue in this case.

Which objection the court sustained, excluding said Exhibit B.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for defendant offered in evidence certified copy of the location certificate of Uinta Tunnel No. 24 lode, same being marked Exhibit C. defendant's proofs. (See page 113.)

To which offer counsel for plaintiff objected as being incompetent, immaterial, and irrelevant, not tending to prove any issue in this case.

Which objection the court sustained excluding said Exhibit C.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for defendant offered in evidence certified copy of the location certificate of Uinta Tunnel No. 25 lode, same being marked Exhibit D. defendant's proofs. (See page 117.)

To which offer counsel for plaintiff objected as being incompetent, immaterial, and irrelevant, not tending to prove any issue in this case, and said Uinta Tunnel No. 25 lode not being upon the ground in conflict or near it.

90 Which objection the court sustained, excluding said Exhibit D.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for defendant offered in evidence certified copy of the location certificate of Uinta Tunnel No. 26 lode, same being marked Exhibit E. defendant's proofs. (See page 121.)

To which offer counsel for plaintiff objected as being incompetent, immaterial, and irrelevant, not tending to prove any issue in this case.

Which objection the court sustained, excluding said Exhibit E.

To which ruling of the court counsel for defendant then and there duly excepted.

W. R. MASON, a witness produced on behalf of the defendant, being duly sworn, in answer to interrogatories propounded to him, testified as follows:

Direct examination.

By Mr. ASHTON:

Q. What is your name?

A. W. R. Mason.

Q. Where do you live?

A. I live about eight miles from Durango at the present time.

Q. How long have you resided in Colorado?

A. About thirteen years.

Q. Are you acquainted with the Uinta tunnel in the Cripple Creek mining district, in the county of Teller in this State?

A. Yes, sir.

Q. When did you first become acquainted with that tunnel, Mr. Mason?

A. Well, I was on the ground about the first, I should say, of November, 1891.

Q. What if any work did you do upon the tunnel at that time?

Thereupon counsel for plaintiff objected to this line of testimony for the reason that the defendant's answer alleges the discovery and location of the tunnel subsequent to the discovery and location of the Ocean Wave and Little Mary lodes, which have since passed to patent, and therefore it is incompetent, immaterial, and irrelevant so far as this controversy is concerned what acts, if any, the witness or any one else performed upon the tunnel or in and about its location and driving. Which objection the court sustained.

91 To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for defendant made the following offer: To prove by this witness that in the month of November, 1891, he went to what now appears to be the portal of the Uinta tunnel, and upon the unoccupied and unappropriated public domain and started to work thereon; that afterwards and on the 18th day of February, 1892, the witness W. R. Mason, who was then a citizen of the United States over the age of twenty-one years, together with William E. Hall, who was likewise a citizen of the United States and over the age of twenty-one years, and one Herman Teitija, who was also a citizen of the United States and over the age of twenty-one years, located the Uinta tunnel claim and tunnel site and placed a notice at the portal of the tunnel containing the name of tunnel, giving its distances and courses and the names of locators or claimants; that from the time of the location thereof up to the month of September, 1895, the tunnel was worked continuously and diligently and there was no time when it remained idle for a period to exceed three months, and that the location was made in good faith and prosecuted with all the diligence that he and the locators thereof could prosecute the same until September, 1894, when it passed out of the hands of Mason, Hall and Teitija to Thomas J. Maloney. That at the time of the location and the making out of the location certificate of the Uinta tunnel on the 18th day of February, 1892, the same was surveyed; that the surface boundaries thereof were marked by substantial posts hewed in towards the bore of the tunnel, and that the tunnel was marked by posts running along the bore of the tunnel for a distance of 3,000 feet and for a distance of 1500 feet on each side thereof.

To which offer counsel for plaintiff objected as being incompetent, immaterial, and irrelevant, not tending to prove any issue in this case.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Q. I will ask you if you are acquainted with the Ocean Wave and Little Mary Lode mining claims?

A. Yes, sir.

Q. At the time of making out the location certificate of the Uinta Tunnel on the 18th day of February, 1892, state, if you know, whether there had been a discovery of mineral in either of the discovery shafts of the Ocean Wave and Little Mary Lode mining claims, or in any other place, upon either of said claims?

92 Objected to as incompetent, immaterial, and irrelevant, not tending to prove any issue in this case, and for the further reason that the patent to these claims can not be attacked collaterally in this way.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for defendant made the following offer: To prove by this witness that at the time of the location of the Uinta Tunnel in February, 1892, and for more than a year thereafter there had been no discovery whatsoever of any kind, nature, or description of ore in the discovery shafts of either of the Little Mary or Ocean Wave lodes and mining claims or upon any other part or portion of the territory embraced within the surface boundaries of either of said lodes and mining claims.

To which offer counsel for plaintiff objected as being incompetent, immaterial, and irrelevant, not tending to prove any issue in this case, and for the further reason that the patent to these claims can not be (attac*h*ed) collaterally in this way.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for defendant offered in evidence a certified copy of the location certificate of the Uinta Tunnel, same being marked Exhibit F, defendant's proofs. (See page 125.)

To which offer counsel for plaintiff objected as being incompetent, immaterial, and irrelevant, not tending to prove any issue in this case.

Which objection the court sustained, excluding said Exhibit F.

To which ruling of the court counsel for the defendant then and there duly excepted.

THOMAS J. MALONEY, a witness produced on behalf of the defendant, being duly sworn, in answer to interrogatories propounded to him, testified as follows:

Direct examination.

By Mr. ASHTON:

Q. What is your name?

A. Thomas J. Maloney.

Q. Are you acquainted with the Uinta Tunnel?
A. I am.
Q. When did you first become acquainted with it Mr. Maloney?
A. The latter part of July, 1894.
Q. Were you ever interested in it?
A. I was.
Q. When did you become interested in it?
93 A. About the 1st of September, 1894,—well, I was interested in it to some extent during most all of the month of August, but completed an agreement for deed——
Q. Month of August, what year?
A. Same year, 1894.
Q. What, if anything, do you know about the work being continuous upon the tunnel from August, 1894, until you parted with your possession of it.
A. I know that it was. I had a bond for a deed on the entire tunnel property from about the latter part—it took me most of the month of August to acquire the different interests and get a deed. I got a deed to the property by about the 1st of September, and from the time——
Q. From the time that you became interested in it in September, 1894, up to the time you parted with it, was it worked continuously?
A. It was.

Mr. LEE: I move to strike out the question and answer as incompetent, immaterial, and irrelevant, tending to prove no issue in this case.

Which objection the court overruled as the witness has answered the question and no objection was made to the question.

Motion denied.

Mr. LEE: The witness answered so quickly I did not have time.

Q. What time did you part with the possession of it, Mr. Maloney?
A. I parted with part of the ownership in it early in the summer of 1895.
Q. To whom?
A. To James Doyle of Victor, one-half.
Q. When did you part with the other?
A. I think it was in March, 1896.
Q. To whom?
A. To Mr. Doyle.
Q. From the time that you sold a half interest in it to Mr. Doyle, until you parted with the entire interest, do you know whether it was worked continuously between those dates or not?

Objected to as immaterial.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for defendant made the following offer: To prove by this witness that from the time he sold the half in-
94 terest to the time he parted with the entire interest to Mr. Doyle it was worked with great despatch and great diligence and a plant of machinery was placed at the portal of the tunnel at an expense of $10,000 or $15,000.

To which offer counsel for plaintiff objected as being, incompetent and immaterial, not tending to prove any issue in the case.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

JAMES DOYLE, a witness produced on behalf of the defendant being duly sworn, in answer to inter-ogatories propounded to him testified as follows:

Direct examination.

By Mr. ASHTON:

Q. What is your name?
A. James Doyle.
Q. Where do you reside, Mr. Doyle?
A. At Victor, Colorado.
Q. How long have you resided there?
A. Since January, 1891, in that locality.
Q. Do you know the Uinta Tunnel?
A. I do.
Q. How long have you been acquainted with that tunnel?
A. Since the month of February, 1892.
Q. Did you ever become interested in the Uinta Tunnel?
A. I did.
Q. When?
A. I think in the year 1895.
Q. From whom did you derive your interest?
A. Thomas J. Maloney.
Q. After you became interested in the tunnel, I will ask you if it was worked continuously and with diligence from that time until you were enjoined by the Federal court from further proceeding with the tunnel?

Objected to as incompetent, immaterial, and irrelevant, not tending to prove any issue in this case.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for defendant made the following offer: To prove by this witness that immediately after he became interested in and became the owner of the tunnel he placed a plant of machinery therein at an expense of $15,000; that from that time on the tunnel was driven with great despatch; that he expended in

and about the driving of the bore of the tunnel the further sum of
$50,000; that no objection was made by the Creede and Cripple
95 Creek Mining and Milling Company, its officers, servants, or
employés against the working of the tunnel; that no objection had been made by them until the tunnel was driven to its present face, a distance of 1100 feet beyond the easterly side line of the Ocean Wave lode, and then objection was only made when the then owner of the tunnel had uncovered and discovered a vein of ore from which he was mining, extracting and selling rich and valuable bodies of ore.

To which offer counsel for plaintiff objected as being incompetent, immaterial, and irrelevant, not tending to prove any issue in this case.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for defendant made the following further offer: To prove by this witness that at the time of driving the tunnel through the territory embraced in the surface boundaries of the Little Mary (—) Ocean Wave Lode mining claims the control of the stock of the plaintiff was held by parties other than those that now have control of it, and that the parties now having control and who instituted this suit purchased the control of the stock for the purpose of annoying and harrassing this witness in the driving and prosecuting of his tunnel and to prevent him from extracting the ore and mineral which he had uncovered and discovered in driving the tunnel.

To which offer counsel for plaintiff objected as being entirely incompetent and immaterial to any issue in this case.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for defendant made the following further offer: To prove by this witness that at the time the bore of the tunnel was being driven through the Ocean Wave and Little Mary lodes the then officers and agents of the Creede and Cripple Creek Mining and Milling Company, the owners of the Little Mary and Ocean Wave Lode claims acquiesced in the driving of said tunnel through said property.

To which offer counsel for plaintiff objected as being entirely incompetent and immaterial to any issue in this case.

Which objection the court sustained.

To which ruling of the court counsel for defendant then and there duly excepted.

Thereupon counsel for defendant offered in evidence a certified
copy of the location certificate of the Black Jasper Lode,
96 mining claim, same being marked Exhibit G., defendant's
proofs. (See page 129.)

To which offer counsel for plaintiff objected as being incompetent, immaterial, and irrelevant, not tending to prove any issue in

this case, and for the further reason that there has been no testimony offered to show the discovery or any of the acts of location of the Black Jasper lode, or that it is located upon the unappropriated public mineral domain of the United States.

Mr. ASHTON: That objection is good and I withdraw the offer for a moment.

JOHN T. HAWKINS, a witness produced on behalf of the defendant, being duly sworn, in answer to interrogatories propounded to him, testified as follows:

Direct examination.

By Mr. ASHTON:

Q. What is your name?
A. John T. Hawkins.
Q. Where do you reside?
A. In the Cripple Creek mining district.
Q. How long have you resided there?
A. Eight years.
Q. What is your business?
A. Mining superintendent.
Q. How long have you been mining?
A. Twenty years.
Q. Are you acquainted with the Black Jasper Lode mining claim and the discovery shaft thereof?
A. I am.
Q. Do you know how deep it was sunk from the lowest point of the rim from the surface?

Objected to as immaterial and irrelevant.
Which objection the court overruled.

(Continuing:) Do you know whether it was sunk more than ten feet from the lowest point of the rim from the surface?
A. Yes, sir; deeper than that.
Q. Do you know whether a vein was uncovered or discovered in the Black Jasper?

Objected to as immaterial and irrelevant—
Which objection the court overruled.

A. Yes, I have seen a vein in the shaft.
Q. Did it contain values or not?
A. Yes, sir.
Q. Do you know Vance Carothers?
A. Yes, sir.
Q. How long have you known him.
A. I was not very intimately acquainted with him.
Q. What is his business?
A. Mining surveyor.

Q. Do you know whether he was over the age of twenty-one years on the 30th day of January, 1897?

97 A. Yes, sir.

Q. About how old a man was he?

A. About forty, I should think.

Q. Was he a citizen of the United States?

A. To the best of my belief.

Cross-examination.

By Mr. LEE:

Q. Where were you born?

A. In England.

Q. How long have you been in this country?

A. Since 1886.

Q. How long have you known Mr. Carothers?

A. Eighteen months—not intimately.

Q. You don't know where Mr. Carothers was born?

A. No.

Thereupon counsel for defendant renewed his offer in evidence of a certified copy of the location certificate of the Black Jasper Lode mining claim, same being marked Exhibit G, defendant's proofs.

To which offer counsel for plaintiff objected as being incompetent and immaterial, not tending to prove any issue in this case.

Which objection the court sustained, excluding said exhibit from the evidence.

To which ruling counsel for defendant then and there duly excepted.

Thereupon it was stipulated between counsel for plaintiff and defendant that counsel for defendant need not introduce the chain of proof showing the title to the Black Jasper Lode mining claim as being in the Uinta Tunnel, Mining and Transportation Company; that the Uinta Tunnel Mining and Transportation Company by mesne conveyances from the locators and their grantors is the owner of the Uinta Tunnel and that the Uinta Tunnel Mining and Transportation Company is the owner of the Uinta Tunnel, and the Black Jasper and Uinta Tunnel No. 1 lodes and mining claims.

Thereupon counsel for defendant offered in evidence a certified copy of the location certificate of Uinta Tunnel No. 1 Lode mining claim same being marked Exhibit H, defendant's proofs. (See page 134.)

To which exhibit counsel for plaintiff objected as being incompetent, immaterial, and irrelevant, not tending to prove any issue in this case.

Which objection the court sustained, excluding said Exhibit H. from the evidence.

98 To which ruling of the court counsel for defendant then and there duly excepted.

And this was all the evidence produced or offered by the defendant.

COMPLAINANT'S EXHIBITS.

EXHIBIT 1, COMPLAINANT'S PROOFS.

(In ink:) s. c. Copy.

827. *Location Certificate.*

The Out West Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, } ss:
County of ——, }

Know all men by these presents, that E. W. McNeal and J. B. Winchell the undersigned, have this 2d day of January, 1892, [190]* located and claimed, and by these presents do locate and claim, by right of discovery and location, in compliance with the mining acts of Congress, approved May 10, 1892, and all subsequent acts, and with local customs, laws and regulations, 1500 linear feet and horizontal measurement on the Ocean Wave lode, vein, ledge, or deposit, along the vein thereof with all its dips, angles and variations, as allowed by law, together with 150′ *feet* on each side of the middle of said vein, at the surface, so far as can be determined from present developments; and all veins, lodes, ledges, or deposits and surface ground, within the lines of said claim 300 feet running N. 18° 30′ E. from center of discovery shaft, and 1200′ *feet* running S. 18° 30′ W. from center of discovery shaft; said discovery shaft being situate upon said lode, vein, ledge, or deposit, and within the lines of said claim in Cripple Creek mining district, county of El Paso and State of Colorado, described by metes and bounds as follows, to wit:

Beginning at corner No. 1, it being northeast corner and running N. 71° 30′ W. 300 ft. to northwest corner No. 2; thence S. 18° 30′ W. 750′ to west side line center; thence S. 18° 30′ W. 750 ft. to southwest corner No. 3; thence S. 71° 30′ E. 300 ft. to southeast corner No. 4; thence N. 18° 30′ E. 750 ft. to east side line center; thence N. 18° 30′ E. 750 ft. to northeast corner No. 1 and point of beginning. This claim tied from northwest corner No. 2 to section corner 19, 20, 31, and 32 in tp. 15, S. R. 69 W. which bears N. 33° 49′ W. 2519′ *ft.*

99 Magnetic variation N. 14° 30′ E.

J. B. WINCHELL. [SEAL.]
E. W. McNEAL. [SEAL.]

Said lode was discovered on the 2d day of January, A. D. 190–1892.

Attest: —— ——.

[* Figures enclosed in brackets erased in copy.]

Date of location, Jan. 2d, A. D. 190- 1892.
Date of certificate, Jan. 29th, A. D. 190- 1892.

FRED MITTON, *Surveyor.*

Filed for record the 1st day of Feb'y A. D. 1892, at 3:29 o'clock p. m.

F. W. HOWBERT, *Clerk.*

(The foregoing document was endorsed as follows:)
Location certificate on the Ocean Wave mining claim of Creede & Cripple Ck. M. & M. Co. in Cripple Creek mining district. —— county, State of Colorado. State of Colorado, county of ——, *ss:* I hereby certify that this location certificate was filed for record in my office at — o'clock — m. —— 190- and is duly recorded in Book — at page —. —— ——, recorder, by —— ——, deputy. Fees, $—

(Attached to the foregoing document was the following:)

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, } *ss:*
County of El Paso, }

I, W. H. Reed, county clerk and recorder in and for the aforesaid county and State, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain location certificate of the Ocean Wave Lode mining claim. Filed for record in my
100 office at 3:29 o'clock p. m. Feb. 1, 1892, and duly recorded in Book No. 2 at page 113 of the records of this office made from the original [paper]* record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Colorado Springs, in said county and State, this 20th day of Jan. A. D. 1902.

(Signed) W. H. REED,
County Clerk and Recorder,
By —— ——, *Deputy.*

[Seal El Paso County, Colorado.]

The foregoing certification endorsed as follows:)
Certificate of copy of — made from — record — page —, this — day of —— A. D. 190-. —— ——.

[*Word enclosed in brackets erased in copy.]

EXHIBIT 2, COMPLAINANT'S PROOFS.

s-c copy (written in ink).

827. *Location Certificate.*

The Out West Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, } ss:
County of El Paso, }

Know all men by these presents, that J. B. Winchell and E. W McNeal the undersigned, have, this 2nd day of January, 1892, [190]* located and claimed, and by these presents do locate and claim, by right of discovery and location, in compliance with the mining acts of Congress, approved May 10, 1872, and all subsequent acts, and with local customs, laws, and regulations, 1500 linear feet and horizontal measurement on the Little Mary lode, vein, ledge or deposit, along the vein thereof, with all its dips, angles, and variations, as allowed by law, together with 150 feet on each side of the middle of said vein, at the surface, so far as can be determined from present developments; and all veins, lodes, ledges, or deposits and surface ground, within the lines of said claim 300 feet running N. 18° 30' E. from center of discovery shaft, and 1200 feet running S.
101 18° 30' W. from center of discovery shaft; said discovery shaft being situate upon said lode, vein, ledge, or deposit, and within the lines of said claim, in Cripple Creek mining district, county of El Paso and State of Colorado, described by metes and bounds as follows, to wit:

Beginning at corner No. 1, it being northeast corner and running N. 71° 30' W. 300 feet to northwest corner No. 2; thence S. 18° 30' W. 750 feet to west side line center; thence S. 18° 30' W. 750 feet to southwest corner No. 3; thence S. 71° 30' E. 300 feet to southeast corner No. 4; thence N. 18° 30' E. 750 feet to east side line center; thence N. 18° 30' E. 750 ft. to northeast corner No. 1 and point of beginning. This claim tied from northeast corner No. 1 to section corner 19, 20, 31, and 32, in tp. 15 S. range 69 W. which bears N. 23° 49' W. 2519 feet. Magnetic variation N. 14° 30' E.

E. W. McNEAL. [SEAL.]
J. P. WINCHELL. [SEAL.]

Said lode was discovered on the 2d of January A. D. [190]* 1892.

Attest:

—— ——.
—— ——.

[*Figures enclosed in brackets erased in copy.]

Date of location, January 2nd A. D. 1892.
Date of certificate, Jan. 29th, A. D. 1892.
FRED E. MITTON, *Surveyor.*

Filed for record the 1 day of Feb'y A. D. 1892 at 3:28 o'clock p. m.

F. W. HOWBERT, *Clerk.*

(The foregoing document was endorsed as follows:)
Location certificate. On the Little Mary mining claim of Creede & Cripple Ck. M. & M. C. in Cripple Creek mining district, —— county, State of Colorado. State of Colorado, county of ——, *ss.* I hereby certify that this location certificate was filed for record in my office at — o'clock — m., —— — 190– and is duly recorded in Book — at page —. —— —— recorder. By —— ——, deputy. Fees, $—.

102 (Attached to the foregoing document was the following:)

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, } *ss:*
County of El Paso, }

I, W. H. Reed, county clerk and recorder in and for the aforesaid county and State, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain location certificate of the Little Mary Lode mining claim. Filed for record in my office at 3:28 o'clock p. m. Feb. 1, 1892, and duly recorded in Book No. 2 at page 113 of the records of this office. Made from the original [paper.]* record.

In testimony whereof, I have hereunto set my hand and affixed my official seal at my office in Colorado Springs, in said county and State, this 20th day of Jan. A. D. 1902.

[Seal El Paso County, Colorado.]

(Signed) W. G. REED,
County Clerk and Recorder,
By —— ——, *Deputy.*

(The foregoing certification endorsed as follows:
Certificate of copy of — Made from — record. Page —, this — day of —— A. D. 190–. —— ——.

[* Word enclosed in brackets erased in copy.]

EXHIBIT 3, COMPLAINANT'S PROOFS.

(Written in ink:) s-c copy.

832. *Mining Deed, with Additional Title. J. M.*, 2397.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

This indenture, made the 4th day of March in the year of our Lord one thousand eight hundred and ninety-two between J. B. Winchell and E. W. McNeal of the county of El Paso and State of Colorado, parties of the first part, and John N. Bartels of the county of El Paso and State of Colorado, party of the second part,

103 Witnesseth: That the said parties of the first part for and in consideration of the sum of one hundred dollars, currency of the United States of America, to him in hand paid by the said party of second part, the receipt whereof is hereby acknowledged, have granted bargained, sold, remised, released, and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part, and to his heirs and assigns. An undivided one thirty-second interest in and to the following described mining claims, situate in the Cripple Creek or Wymack mining district, in El Paso county, State of Colorado, to wit: The Hillside lode, the East Lynne lode, the Snow Flake lode, the Little Doc lode, the Little Mary lode, the Ocean Wave lode, the Evening Twilight lode, the Sunset lode.

The location certificates of said above described lode claims are recorded upon the records of El Paso county, Colorado, as follows: The Hillside & East Lynne lodes in Book 2 on page 18, the Snow Flake in Book 2 on page 112; the Little Doc lode in Book 2 on page 111; the Little Mary & Ocean Wave lodes in Book 2 on page 113; the Evening Twilight lode in Book 2 page 112, the Sunset lode in Book 2 on page 17.

Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in anywise appertaining, and the rents issues and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever as well in law as in equity of the said parties of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances;

and the said — part- of the first part, for — heirs, executors and administrators, do hereby covenant with the said part- of the second part, — heirs and assigns; that the said part- of the first part at the request of the said part- of the second part — heirs or assigns, shall and will from time to time, and at all times hereafter, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all and every such further and other acts, conveyances and assurances in the law for the better assuring the said part- of the second part — heirs and assigns, of the premises, in manner as above conveyed or mentioned, and intended to be conveyed as by the said part- of the second part — heirs and assigns, or — counsel learned in the law, shall be reasonably advised and required.

104 To have and to hold, all and singular, the said premises, together with all the appurtenances and privileges thereto incident, unto the said party of the second part his heirs and assigns forever.

It witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

J. B. WINCHELL. [SEAL.]
E. W. McNEAL. [SEAL.]

Signed, sealed, and delivered in presence of—

—— ——.
—— ——.

(On the back of the foregoing was the following:)

STATE OF COLORADO, } ss:
County of Pueblo, }

I, Patrick J. Dugan, a notary public in and for said county, in the State aforesaid, do hereby certify that J. B. Winchell and E. W. McNeal who are personally known to me [as to be]* the persons whose names are subscribed to the [annexed foregoing]* deed, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 4th day of March, A. D. 1892.

[Matter enclosed between rules erased in copy.]

My commission expires June 18, 1895. [1]*

[NOTARIAL SEAL.] PATRICK J. DUGAN,
Notary Public.

Filed for record the 23 day of M'ch A. D., 1892, at 10:50 o'clock a. m.

F. W. HOWBERT, *Recorder.*

(The foregoing document was endorsed as follows:)

No. — Mining deed. J. B. Winchell and E. W. McNeal to John N. Bartels. State of Colorado, county of —— *ss.* I hereby that this deed was filed for record on the — day of —— 1—, at — 105 o'clock — m., in my office, and duly recorded in Book — page No. — —— —— recorder. By —— —— deputy. Fee, $— The Out West Printing and Stationery Co., Colorado Springs, Colo.

(Attached to the foregoing document was the following:)

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs, Colo·

STATE OF COLORADO, } *ss:*
County of El Paso, }

I, W. H. Reed, county clerk and recorder in and for the aforesaid county and State, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain mining deed with additional title. J. B. Winchell *et al.*, to John N. Bartels. Filed for record in my office at 10:50 o'clock a. m. March 23, 1892, and duly recorded in book 142 at page 293 of the records of this office, made from the original [paper]* record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Colorado Springs, in said county and State, this 20th day of Jan. A. D. 1902.

[Seal El Paso County, Colorado.]

(Signed) W. H. REED,
County Clerk and Recorder,
By —— ——, *Deputy.*

[*Words and figures enclosed in brackets erased in copy.]

(The foregoing certification endorsed as follows:)

(See next page.)

Certificate of copy of — made from — record, page —, this — day of —— A. D. 190–

106 EXHIBIT 4, COMPLAINANT'S PROOFS.

(Written in ink:) s-c copy.

832. *Mining Deed, with Additional Title. J. M.* 2397.

The Out West Printing and Stationery Co., Colorado Springs, Colo

This indenture, made the 10th day of March in the year of our Lord one thousand eight hundred and ninety-two between J. B. Winchell and E. W. McNeal of the county of El Paso and State of Colorado, party of the first part, and Geo. M. Carter of the county of El Paso and State of Colorado, party of the second part:

Witnesseth: That the said party of the first part, for and in consideration of the sum of twenty-two hundred and fifty dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quitclaimed and by these presents do grant, bargain, sell, remise, release, and forever qutclaim unto the said party of the second part, and to his heirs and assigns.

All of fifteen shares in eight mining claims being an undivided fifteen thirty-second (15 / 32) interest in the following lode claims, the Hillside East Lynne, Little Doc, Little Mary, Ocean Wave, Sunset, Snow Flake, and Evening Twilight all lode claims, located in Cripple Creek mining district and more particularly described in location certificates made by J. B. Winchell and E. W. McNeal and duly recorded on the records of El Paso county, Colorado.

Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right title, interest, property possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part of, in, or to the said premises, and every part and parcel thereof, with the appurtenances;

and the said —— —— part- of the first part, for — heirs, executors and administrators, do- hereby covenant with the said part- of the second part, — heirs and assigns; that the said part-
107 of the first part at the request of the said part- of the second part — heirs or assigns, shall and will from time to time, and at all times hereafter, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all and every such further and other acts, conveyances and assurances in the law for the better assuring the said part- of the second part — heirs and assigns, of the premises, in manner as above conveyed or mentioned, and intended to be conveyed as by the said part- of the second part — heirs and assigns, or — counsel learned in the law, shall be reasonably advised and required.

To have and to hold, all and singular, the said premises, together with all the appurtenances and privileges thereto incident, unto the said party of the second part his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

his
J. B. x WINCHELL. [SEAL.]
mark.
E. W. McNEAL. [SEAL.]

Signed, sealed, and delivered in presence of
H. E. BASSETT,
Witness to Mark.

(On the back of the foregoing was the following:)

STATE OF COLORADO, } ss:
County of El Paso, }

I, H. E. Bassett, a notary public in and for said county, in the State aforesaid, do hereby certify that J. B. Winchell and E. W. McNeal who are personally known to me as the persons whose names are subscribed to the annexed deed, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and official seal, this 10th day of March, A. D. 1892.

My commission expires Oct. 24th, 1895. [1]*
H. E. BASSETT,
Notary Public.

My commission expires Oct. 24, 1895.

[NOTARIAL SEAL.]

[Matter enclosed between rules erased in copy.]

Filed for record the 14 day of M'ch A. D. 1892. At 11:55 o'clock a. m.

F. W. HOWBERT, *Recorder.*

108 (The foregoing document was endorsed as follows:)

No. —. Mining deed. J. W. Winchell and E. W. McNeal to Geo. M. Carter. State of Colorado, county of ——, *ss.* I hereby certify that this deed was filed for record on the — day of —— 1— at — o'clock — m. in my office, and duly recorded in Book — page No. —. —— —— recorder. By —— ——, deputy. Fee, $— The Out West Printing and Stationery Co., Colorado Springs, Colo.

(Attached to the foregoing document was the following:)

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, *County of El Paso,* } *ss:*

I, W. H. Reed, county clerk and recorder in and for the aforesaid county and State, do hereby certify that the within and foregoing is a full, true and correct copy of a certain mining deed with additional title. J. B. Winchell *et al.* to Geo. M. Carter. Filed for record in my office at 11:55 o'clock a. m. March 14, 1892, and duly recorded in Book 142 at page 247 of the records of this office. made from the original [paper.]* record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Colorado Springs, in said county and State, this 20th day of Jan. A. D. 1902.

[Seal El Paso County, Colorado.]

(Signed) W. H. REED,
County Clerk and Recorder,
By —— ——, *Deputy.*

109 (The foregoing certification endorsed as follows:)

Certificate of copy — made from — record, page —, this — day of —— A. D. 190–. —— ——

[* Words and figures enclosed in brackets erased in copy.]

EXHIBIT 5, COMPLAINANT'S PROOFS.

(Written in ink :) s-c copy.

832. *Mining Deed with Additional Title. J. M.* 2397.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

This indenture, made the 13th day of February, in the year of our Lord one thousand eight hundred and ninety-two, between J. B. Winchell and E. W. McNeal of the county of El Paso and State of Colorado, parties of the first part, and J. T. Estill of the county of El Paso and State of Colorado, party of the second part,

Witnesseth: That the said parties of the first part, for and in consideration of the sum of one dollar and other valuable considerations [dollars,]* in lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised and released and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part, and to his heirs and assigns one share in eight lode mining claims, being an undivided one thirty-second (1 / 32) interest in the following claims: The "Hillside" the "East Lynne" the "Sunset" the Ocean Wave, the Little Doc, the Little Mary, the "Snow Flake," the "Evening Twilight," all of said mining claims being located in Cripple Creek mining district and more particularly described by location certificates duly recorded on the records of El Paso county, Colorado.

Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurte-
110 nances thereto belonging, or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right title, interest, property possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of in, or to the said premises, and every part and parcel thereof, with the appurtenances;

[* Word enclosed in brackets erased in copy.]

and the said — part- of the first part, for — heirs, executors and administrators, do- hereby covenant with the said part- of the second part, — heirs and assigns; that the said part- of the first part at the request of the said part- of the second part — heirs or assigns, shall and will from time to time, and at all times hereafter, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all and every such further and other acts, conveyances and assurances in the law for the better assuring the said part- of the second part — heirs and assigns, of the premises in manner as above conveyed or mentioned, and intended to be conveyed, as by the said part- of the second part — heirs and assigns, or — counsel learned in the law, shall be reasonably advised and required.

To have and to hold, all and singular, the said premises, together with all the appurtenances and privileges thereto incident, unto the said party of the second part his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

J. B. x (his mark) WINCHELL. [SEAL.]

E. W. McNEAL. [SEAL.]

Signed, sealed, and delivered in presence of

Witness to mark

H. E. BASSETT.

(On the back of the foregoing was the following:)

STATE OF COLORADO, } ss:
County of El Paso, }

I, H. E. Bassett, a notary public in and for said county in the State aforesaid, do hereby certify that J. B. Winchell and E. W. McNeal who are personally known to me (to be) as the persons whose names are subscribed to the annexed (foregoing) deed, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

111

Given under my hand and notarial seal this 13th day of February, A. D. 1892.

[Matter enclosed between rules erased in copy.]

My commission expires Oct. 24, 1895. [1]*

H. E. BASSETT,
Notary Public.

[NOTARIAL SEAL.]

Filed for record the 13 day of Feb'y, A. D. 1892, at 4:02 o'clock p. m.

F. W. HOWBERT, *Recorder.*

(The foregoing mining deed was endorsed as follows:)

No. —. Mining deed. J. B. Winchell and E. W. McNeal to J. T. Estill. State of Colorado, county of ——, *ss.* I hereby certify that this deed was filed for record on the — day of ——, 1—, at — o'clock — m., in my office, and duly recorded in Book —, page No. —. —— ——, recorder, by —— ——, deputy. Fee, $—. The Out West Printing and Stationery Co., Colorado Springs, Colo.

(Attached to the foregoing mining deed was the following:)

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, } *ss:*
County of El Paso, }

I, W. H. Reed, county clerk and recorder in and for the aforesaid county and State, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain mining deed with additional title. J. B. Winchell *et al.* to J. T. Estill. Filed for
112 record in my office at 4:02 o'clock p. m. Feb'y 13, 1892, and duly recorded in Book No. 142, at page 112 of the records of this office. made from the original [paper,]* record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Colorado Springs, in said county and State, this 20th day of Jan., A. D. 1902.

[Seal El Paso County, Colorado.]

(Signed) W. H. REED,
County Clerk and Recorder,
By —— ——, *Deputy.*

(The foregoing certification endorsed as follows:)

Certificate of copy of — made from — record, page —, this — day of ——, A. D. 190–. —— ——.

[* Word and figure enclosed in brackets erased in copy.]

EXHIBIT 6, COMPLAINANT'S PROOFS.

(Written in ink :) s-c copy.

832. *Mining Deed, with Additional Title. J. M.* 2397.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

This indenture, made the tenth day of February, in the year of our Lord one thousand eight hundred and ninety-two between J. B. Winchell and E. W. McNeal of the county of El Paso and State of Colorado, parties of the first part, and H. C. Shimp and H. E. Bassett of the county of El Paso and State of Colorado, parties of the second part:

Witnesseth: That the said parties of the first part for and in consideration of the sum of one hundred and fifty dollars in lawful money of the United States of America, to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release, and forever quitclaim unto the said parties of the second part, and to their heirs and assigns one share in eight mining claims, being an undivided one thirty-second (1/32) interest in the following claims, the "Hillside" lode, the "East Lynne"
113 lode, the "Sunset" lode, the "Ocean Wave" lode, the "Little Doc" lode, the "Little Mary" lode, the "Snow Flake" lode and the "Evening Twilight" lode. All located in Cripple Creek mining district and more particularly described by location certificates duly recorded on the records of El Paso county, Colorado.

Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part, of in, or to the said premises, and every part and parcel thereof, with the appurtenances;

and the said —— —— part- of the first part, for — heirs, executors and administrators, do- hereby covenant with the said part- of the second part, — heirs and assigns; that the said part- of the first part at the request of the said part- of the second part — heirs or assigns, shall and will from time to time, and at all times hereafter, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all and every such further and other acts, conveyances and assurances in the law for the better assuring the said part- of the second part — heirs and assigns, of the premises, in manner as above conveyed or mentioned, and intended to be conveyed, as by the said part- of the second part — heirs and assigns, or — counsel learned in the law, shall be reasonably advised and required.

To have and to hold, all and singular, the said premises, together with all the appurtenances and privileges thereto incident, unto the said party of the second part his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

J. B. x (his mark) WINCHELL. [SEAL.]

E. W. McNEAL. [SEAL.]

Signed, sealed and delivered in presence of
Witness to mark
D. P. SILL.

114 (On the back of the foregoing was the following:)

STATE OF COLORADO, } ss:
County of El Paso, }

I, Dudley P. Sill, a notary public in and for said county, in the State aforesaid, do hereby certify that J. B. Williams and E. W. McNeal who are personally known to me [as (to be)]* the persons whose names are subscribed to the [annexed (foregoing)]* deed, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 10th day of February A. D. 1892.

[Matter enclosed between rules erased in copy.]

[* Words enclosed in brackets erased in copy.]

My commission expires Oct. 6th 1894.

DUDLEY P. SILL,
Notary Public.

[NOTARIAL SEAL.]

Filed for record the 13 day of Feb'y A. D. 1892, at 4 o'clock p. m.
F. W. HOWBERT, *Recorder.*

(The foregoing mining deed was endorsed as follows:)
No. —. Mining deed. J. B. Winchell and E. W. McNeal to H. C. Shimp and H. E. Bassett. State of Colorado, county of ——, ss. I hereby certify that this deed was filed for record on the — day of —— 1— at — o'clock — m. in my office, and duly recorded in Book — page No. —. —— —— recorder. By —— — — deputy. Fee, $—. The Out West Printing and Stationery Co., Colorado Springs, Colo.

115 (Attached to the foregoing document was the following:)

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, }
County of El Paso, } *ss:*

I, W. H. Reed, county clerk and recorder in and for the aforesaid county and State, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain mining deed with additional title, H. B. Winchell *et al.* to H. C. Shimp *et al.* Filed for record in my office at 4:00 o'clock p. m. Feb. 13, 1892, and duly recorded in Book No. 142 at page 110 of the records of this office. made from the original [paper.]* record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Colorado Springs, in said county and State, this 20th day of Jan. A. D. 1902.

[Seal El Paso County, Colorado.]

(Signed) W. H. REED,
County Clerk and Recorder,
By ——, *Deputy.*

(The foregoing certification endorsed as follows:)
Certificate of copy. of — Made from — record, page —, this — day of —— A. D. 190–. ——.

[* Word enclosed in brackets erased in copy.]

EXHIBIT 7, COMPLAINANT'S PROOFS.

(Written in ink:) s-c copy.

882. *Mining Deed, with Additional Title. J. M.* 2397.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

This indenture, made the 1st day of February, in the year of our Lord one thousand eight hundred and ninety-two between
116 J. B. Winchell and E. W. McNeal of the county of El Paso and State of Colorado, parties of the first part, and H. M. Fitzhugh of the county of El Paso and State of Colorado, party of the second part,

Witnesseth: That the said parties of the first part, for and in consideration of the sum of one dollar and other valuable considerations [dollars],* in lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to her heirs and assigns.

One share in eight mining claims being an undivided one thirty-second (1/32) interest in the following named claims: The "Hillside," the "East Lynne," the "Sunset," the "Ocean Wave," the "Little Mary," the "Little Doc," the "Evening Twilight" and the "Snow Flake," all in the "Cripple Creek" mining district, located and previously owned by J. B. Winchell and E. W. McNeal more particularly described by location certificates duly recorded in the records of El Paso county, Colorado.

Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part of, in, or to the said premises, and every part and parcel thereof, with the appurtenances,

---

[* Word enclosed in brackets erased in copy.]

and the said —— —— part- of the first part, for — heirs, executors and administrators, do hereby covenant with the said part- of the second part, — heirs and assigns; that the said part- of the first part at the request of the said part- of the second part — heirs or assigns, shall and will from time to time, and at all times hereafter, execute, acknowledge and deliver or cause to be executed, acknowledged and delivered all and every such further and other acts, conveyances and assurances in the law for the better assuring the said part- of the second part — heirs and assigns, of the premises, in manner as above conveyed or mentioned, and intended to be conveyed, as by the said part- of the second part — heirs and and assigns, or — counsel learned in the law, shall be reasonably advised and required.

117 To have and to hold all and singular the said premises, together with all the appurtenances and privileges thereto incident, unto the said party of the second part his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

J. B. x (his mark.) WINCHELL. [SEAL.]

E. W. McNEAL. [SEAL.]

Signed, sealed, and delivered in presence of
Witness to mark
H. E. BASSETT.

(On the back of the foregoing was the following:)

STATE OF COLORADO, } ss:
County of El Paso, }

I, H. E. Bassett, a notary public in and for said county, in the State aforesaid, do hereby certify that J. B. Winchell and E. W. McNeal who are personally known to me [as]* to be the persons whose names are subscribed to the foregoing [annexed]* deed, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this first day of February, A. D. 1892.

[Matter enclosed between rules erased in copy.]

My commission expires October 24th, 1895. [1]*

[NOTARIAL SEAL.] H. E. BASSETT,
Notary Public.

Filed for record the 12 day of Feb'y A. D. 1892 at 11.22 o'clock a. m.

F. W. HOWBERT, *Recorder.*

(The foregoing mining deed was endorsed as follows:)

No. —. Mining deed. J. B. Winchell and E. W. McNeal to H. M. Fitzhugh. State of Colorado, county of —— *ss.* I hereby certify that this deed was filed for record on the — day of —— 1—
118 at — o'clock — m. in my office, and duly recorded in Book — page No. —. —— —— recorder. By —— —— deputy. Fee, $— The Out West Printing and Stationery Co., Colorado Springs, Colo.

(Attached to the foregoing document was the following:)

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, } *ss:*
County of El Paso, }

I, W. H. Reed, county clerk and recorder in and for the aforesaid county and State, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain mining deed with additional title. J. B. Winchell *et al.* to H. M. Fitzhugh. Filed for record in my office at 11.22 o'clock a. m. Feb'y 12, 1892, and duly recorded in Book No. 142, at page 105 of the records of this office.

Made from the original [paper.]* record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Colorado Springs, in said county and State, this 20th day of Jan. A. D. 1902.

[Seal of El Paso County, Colorado.]

(Signed) W. H. REED,
County Clerk and Recorder,
By ——, *Deputy.*

(The foregoing certification endorsed as follows:)

[* Words and figures enclosed in brackets erased in copy.]

Certification of copy of — made from — record, page —, this — day of —— A. D. 190– —— ——

119 EXHIBIT 8, COMPLAINANT'S PROOFS.

(Written in ink:) s-c copy.

832. *Mining Deed, with Additional Title. J. M.* 2397.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

This indenture, made the 8th day of February, in the year of our Lord one thousand eight hundred and ninety-two between J. B. Winchell and E. W. McNeal of the county of El Paso and State of Colorado, parties of the first part, and C. E. Hudson, of the county of El Paso and State of Colorado, party of the second part,

Witnesseth: That the said parties of the first part, for and in consideration of the sum of one dollar and other valuable considerations, [dollars]* in lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release and forever quitclaim unto the said party of the second part, and to his heirs and assigns.

One share in eight mining claims being an undivided one thirty-second (1/32) interest in the following named claims: The "Hillside," the "East Lynne," the "Sunset," the "Ocean Wave," the "Snow Flake," the "Little Doc," the "Little Mary" and the "Evening Twilight," all in Cripple Creek mining district, located by Winchell and McNeal and more particularly described by location certificates duly recorded on the records of El Paso county, Colorado.

Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto incident, appendant and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part of, in, or to the said premises, and every part and parcel thereof, with the appurtenances;

[* Word enclosed in brackets erased in copy.]

and the said —— ——, part- of the first part, for — heirs, executors and administrators, do- hereby covenant with the said part- of the second part, — heirs and assigns; that the said part- of the first part- at the request of the said part- of the second
120 part — heirs or assigns, shall and will from time to time, and at all times hereafter, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all and every such further and other acts, conveyances and assurances in the law for the better assuring the said part- of the second part — heirs and assigns, of the premises, in manner as above conveyed or mentioned, and intended to be conveyed, as by the said part- of the second part — heirs and assigns, or — counsel learned in the law, shall be reasonably advised and required.

To have and to hold all and singular the said premises, together with all the appurtenances and privileges thereto incident, unto the said party of the second part his heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

J. B. x (his mark.) WINCHELL. [SEAL.]

E. W. McNEAL. [SEAL.]

Signed, sealed, and delivered in presence of
Witness to mark
D. P. SILL.

(On the back of the foregoing was the following:)

STATE OF COLORADO, } ss:
County of El Paso, }

I, Dudley P. Sill, a notary public in and for said county, in the State aforesaid, do hereby certify that J. B. Winchell & E. W. McNeal (in pencil) who are personally known to me [as (to be)]* the persons whose name- are subscribed to the [annexed (foregoing)]* deed, appeared before me this day in person, and acknowledged that they signed, sealed, and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 8th day of February, A. D. 1882.

[Matter enclosed between rules erased in copy.]

My commission expires October 6th, 1894. [1]*

[NOTARIAL SEAL.] DUDLEY P. SILL,
Notary Public.

Filed for record the 13 day of Feb'y A. D. 1892 at 4:01 o'clock p. m.

F. W. HOWBERT, *Recorder.*

121 (The foregoing mining deed was endorsed as follows:)
No. —. Mining deed. J. B. Winchell and E. W. McNeal to C. E. Hudson, State of Colorado, county of ——, *ss.* I hereby certify that this deed was filed for record on the — day of ——, 1—, at — o'clock —. m. in my office, and duly recorded in Book —, page No. —. —— ——, recorder, by —— ——, deputy. Fee $—. The Out West Printing and Stationery Co., Colorado Springs, Colo.

(Attached to the foregoing mining deed was the following:)

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, }
County of El Paso, } *ss:*

I, W. H. Reed, county clerk and recorder in and for the aforesaid county and State, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain mining deed with additional title. J. B. Winchell *et al.* to C. E. Hudson, Filed for record in my office at 4:01 o'clock p. m. Feb'y 13, 1892, and duly recorded in Book No. 142, at page 111 of the records of this office. made from the original [paper.]* record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Colorado Springs, in said county and State, this 20th day of Jan. A. D. 1902.

[Seal El Paso County, Colorado.]

(Signed) W. H. REED,
County Clerk and Recorder,
By —— ——, *Deputy.*

122 (The foregoing certification endorsed as follows:)
Certificate of copy of —. Made from — record, page —, this — day of ——, A. D. 190–. —— ——.

[* Words and figure enclosed in brackets erased in copy.]

EXHIBIT 9, COMPLAINANT'S PROOFS.

(In ink :) s-c copy.

832. *Mining Deed, with Additional Title. J. M.* 2397.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

This indenture, made the eighth day of February in the year of our Lord one thousand eight hundred and ninety-two between J. B. Winchell and E. W. McNeal of the county of El Paso and State of Colorado, parties of the first part, and C. E. Hudson of the county of El Paso and State of Colorado, party of the second part, witnesseth :

That the said parties of the first part, for and in consideration of the sum of one dollar and other valuable considerations [dollars],* in lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents do grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part, and to — heirs and assigns.

One share in eight mining claims being an undivided one thirty-second (1/32) interest in the following claims. The "Hillside," the "East Lynne," the "Sunset," the "Ocean Wave," the "Snow Flake," the "Little Doc," the "Little Mary," and the "Evening Twilight," all located in Cripple Creek mining district and formerly owned by Winchell and McNeal and more particularly described in location certificates duly recorded on the records of El Paso county, Colorado.

Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges, and franchises thereto incident appendant, and appurtenant, or therewith usually had
123 and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances thereto belonging, or in any wise appertaining, and the rents, issues, and profits thereof and also all the estate, right, title, interest, property possession, claim, and demand whatsoever as well in law as in equity of the said parties of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances;

[* Word enclosed in brackets erased in copy.]

and the said —— —— part- of the first part, for — heirs, executors and administrators, do hereby covenant with the said part- of the second part, — heirs and assigns; that the said part- of the first part at the request of the said part- of the second part — heirs or assigns, shall and will from time to time, and at all times hereafter, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all and every such further and other acts, conveyances and assurances in the law for the better assuring the said part- of the second part — heirs and assigns, of the premises, in manner as above conveyed or mentioned, and intended to be conveyed, as by the said part- of the second part — heirs and assigns, or — counsel learned in the law, shall be reasonably advised and required.

To have and to hold, all and singular, the said premises, together with all the appurtenances and privileges thereto incident, unto the said party of the second part — heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

J. B. his x mark. WINCHELL. [SEAL.]

E. W. McNEAL. [SEAL.]

Signed, sealed, and delivered in presence of

—— ——.

Witness to mark.
H. E. BASSETT.

(On the back of the foregoing was the following:)

STATE OF COLORADO, } ss:
County of El Paso, }

I, H. E. Bassett, a notary public in and for said county, in the State aforesaid, do hereby certify that J. B. Winchell and E. W. McNeal, who are personally known to me to be as the persons whose name- foregoing are subscribed to the annexed deed, appeared before me this 124 day in person, and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 8th day of February, A. D. 1892.

[Matter enclosed between rules erased in copy.]

My commission expires Oct. 24th, 1895.

H. E. BASSETT,
Notary Public.

Filed for record the 8 day of Feb'y A. D. 1892, at 3:35 o'clock p. m.

[NOTARIAL SEAL.] F. W. HOWBERT, *Recorder.*

(The foregoing mining deed was endorsed as follows:)

No. —. Mining deed. J. B. Winchell and E. W. McNeal to C. E. Hudson. State of Colorado, county of ——, ss. I hereby certify that this deed was filed for record on the — day of —— 1— at — o'clock — m. in my office, and duly recorded in Book — page No. —. —— —— recorder. By —— —— deputy. Fee, $—. The Out West Printing and Stationery Co., Colorado Springs, Colo.

(Attached to the foregoing mining deed was the following:)

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, }
County of El Paso, } ss:

I, W. H. Reed, county clerk and recorder in and for the aforesaid county and State do hereby certify that the within and foregoing is a full, true, and correct copy of a certain mining deed with
125 additional title. J. B. Winchell *et al.* to C. E. Hudson. Filed for record in my office at 3:35 o'clock p. m. Feb. 8, 1892, and duly recorded in Book No. 142, at page 97, of the records of this office.
made from the original [paper.]* record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Colorado Springs, in said county and State, this 20th day of Jan. A. D. 1902.

[Seal El Paso County, Colorado.]

(Signed) W. H. REED,
County Clerk and Recorder,
By —— ——, *Deputy.*

(The foregoing certification endorsed as follows:)

Certificate of copy of — made from record, page —, this — day of —— A. D. 190–. —— ——.

Exhibit 10, Complainant's Proofs.

No. 832. *Mining Deed, with Additional Title.* *J. M.* 2397.

The Gazette Printing Co., printers and manufacturing stationers, Colorado Springs, Colo.

This indenture, made the 23rd day of March in the year of our Lord one thousand eight hundred and ninety-two between H. E. Bassett, D. P. Sill, J. B. Winchell, E. W. McNeal, C. V. Potts, [O. Schuessels,]* H. T. Cooper, J. T. Estill, [Tho's B. Reeves,]* G. M. Carter, H. M. Fitzhugh, H. C. Shimp & [C. E. Hudson]* of the county of El Paso and State of Colorado, parties of the first part, and the Creede and Cripple Creek Mining and Milling Co. of the county of El Paso and State of Colorado, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of four hundred thousand—100 dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, sold, remised, released, and forever quitclaimed and by these presents do grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the
126 second part, and to their heirs and assigns the following described mining claims, to wit: The "Hillside" lode, the "East Lynne" lode, "the Sunset" lode, "the Ocean Wave" lode the "Little Doc" lode, the "Little Mary" lode, the "Snow Flake" lode, & the "Evening Twilight" lode, all located in Cripple Creek mining district and more particularly described by location certificates duly recorded in the records of El Paso county, Colorado.

The aforesaid claims were located by J. B. Winchell and E. W. McNeal, and location certificates are recorded as follows: The Hillside lode in Book 2 at page 18, filed Jan. 14th, 1892. The East Lynne lode, filed for record Jan. 14th, 1892—in Book 2, page 18 The Little Doc lode, filed for record Feb'y 1st, 1892, in Book 2, at page 111. The Little Mary lode, recorded Feb'y 1st, 1892, in Book 2, at page 113. The Ocean Wave lode, recorded Feb'y 1st, 1892, in Book 2, at page 113, the Snowflake lode, recorded Feb'y 1st, 1892, in Book 2, at page 112, the Sunset lode, recorded Jan. 14th, 1892, in Book 2, at page 17 and the Evening Twilight lode, recorded, Feb'y 1st, 1892, in Book 2, page 112. All the above named lode mining claims are recorded on the records of El Paso county, Colorado.

Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein,

---

[* Words enclosed in brackets erased in copy.]

and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments, and appurtenances, thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, property possession, claim, and demand whatsoever, as well in law as in equity of the said parties of the first part, of, in or to the said premises, and every part and parcel thereof, with the appurtenances; and the said above named parties of the first part, for their heirs, executors, and administratiors, do hereby covenant with the said party of the second part, its heirs and assigns; that the said parties of the first part at the request of the said parties of the second part its heirs or assigns, shall and will from time to time and at all times hereafter execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, all and every such further and other acts, conveyances, and assurances in the law for the better assuring the said party of the second part its heirs and assigns of the premises in manner as above conveyed or mentioned, and intended to be conveyed as by the said party of the second part its heirs and assigns, or its counsel learned in the law, shall be reasonably advised and required.

127 To have and to hold, all and singular, the said premises together with all the appurtenances and privileges thereto incident, unto the said party of the second part its heirs and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

(Signed)	H. E. BASSETT.	[SEAL.]
"	D. P. SILL.	[SEAL.]
"	J. T. ESTILL.	[SEAL.]
"	E. W. McNEAL.	[SEAL.]
"	J. B. x WINCHELL. (his mark.)	[SEAL.]
"	H. M. FITZHUGH.	[SEAL.]
	H. C. SHIMP.	[SEAL.]
	C. V. POTTS.	[SEAL.]
	H. T. COOPER.	[SEAL.]
	G. M. CARTER.	[SEAL.]

Signed, sealed, and delivered in presence of—

Witness to mark of J. B. Winchell:
(Signed) THOMAS DONNELD.

(On back of foregoing document was the following:)

STATE OF COLORADO, }
County of El Paso, } ss:

I, Ira Harris, a notary public in and for said county, in the State aforesaid, do hereby certify that H. E. Bassett, D. P. Sill, J. T.

Estill, E. W. McNeal, J. B. Winchell, George M. Carter, H. M. Fitzhugh, H. C. Shimp, C. V. Potts, and H. T. Cooper, personally known to me as the persons whose names are subscribed to the annexed deed, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument of writing as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 23rd day of March, A. D. 1892.

(Signed) IRA HARRIS,
Notary Public.

(Stamped in red ink stamp:)
My commission expires February 13th, 1896.

[NOTARIAL SEAL.]

128 (The foregoing deed was endorsed as follows, to wit:)
No. —. Mining deed. H. E. Bassett *et al.* to the Creede and Cripple Creek Mining and Milling Co. State of Colorado, county of El Paso, *ss.* I hereby certify that this deed was filed for record on the 23 day of M'ch, 1892, at 3.35 o'clock p. m. in my office, and duly recorded in Book 142, page No. 295. F. W. Howbert, recorder, by —— ——, deputy. Fee, $3.70. The Gazette Printing Company, Colorado Springs, Colo.

On page 77, part of this exhibit, in 9th line of first paragraph, the word "party" has evidently been written "parties" and then a "y" made over the "ies.")

EXHIBIT 11, COMPLAINANT'S PROOFS.

No. 119.

Mining Deed.

Printed and for sale by the News Printing Company, Denver, Colo.

This indenture, made the 25th day of May in the year of our Lord eighteen hundred and ninety-two between J. N. Bartels of the county of El Paso, and State of Colorado, party of the first part, and [of]* the Creede and Cripple Creek Mining and Milling Company county of El Paso, and State of Colorado, party of the second part: witnesseth:

That the said party of the first part for and in consideration of the sum of one hundred dollars, money of the United States of America, to him in hand paid by the said party of the second part,

[* Words enclosed in brackets erased in copy.]

the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents do- grant, bargain, sell, remise, release, and forever quitclaim unto the said party of the second part, and to his heirs and assigns,

One undivided one thirty-second interest in and to the following described mining claims situated in the Cripple Creek or Womack mining district in El Paso county State of Colorado to wit the
129 Hillside lode. The Snow Flake lode. The East Lynne lode: The Little Doc lode: The Little Mary lode: The Ocean Wave lode: The Evening Twilight lode; The Sun Set lode: The location certificates of said above described lode claims are recorded upon the records of El Paso county Colorado as (follows): The Hillside & East Lynne lodes in Book 2 on page 18: The Snow Flake in Book 2 on page 112: The Little Doc lode in Book 2 on page 111: The Little Mary & Ocean Wave lodes in Book 2, on page 113: The Evening Twilight lode in Book 2 on page 112; The Sunset lodes in Book 2 on page 117:

Together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein; and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed, and also all and singular the tenements, hereditaments, and appurtenances, thereto belonging or in anywise appertaining, and the rents, issues, and profits thereof; and also, all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity of the said party of the first part of, in or to the said premises, and every part and parcel thereof with the appurtenances, and the said J. N. Bartels party of the first part for his heirs, executors, and administrators, does hereby covenant with the said party of the second part, his heirs and assigns, that the said party of the first part, at the request of the said party of the second part, his heirs or assigns, shall and will from time to time, and at all times hereafter, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered all and every such further and other acts, conveyances and assurances in the law for the better assuring the said party of the second part, his heirs and assigns, of the premises, in manner as above conveyed or mentioned, and intended to be conveyed as by the said party of the second part, his heirs and assigns, or his counsel learned in the law, shall be reasonably advised and required.

To have and to hold all and singular, the said premises, together with all the appurtenances and privileges thereto incident unto the said party of the second part his heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signed) J. N. BARTELS. [SEAL.]

Signed, sealed and delivered in the presence of

____ ____.

____ ____.

130 (On the back of the foregoing was the following:)

STATE OF COLORADO, } ss:
El Paso County, }

I, William L. Spell a notary public in and for said county, in the State aforesaid, do hereby certify that J. N. Bartels personally known to me to be the person whose (names) is subscribed to the annexed deed, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument of writing as his free and voluntary act for the uses and purposes therein set forth.

I further certify that my commission expires May 6th, 1896.

Given under my hand and seal this 25th day of May, A. D. 1892.

[NOTARIAL SEAL.] (Signed) WILLIAM L. SPELL,
Notary Public.

(The foregoing document was endorsed as follows:)

No. —. Mining deed J. N. Bartels to the "Creede and Cripple-Creek" Mining & Milling Co. State of Colorado, El Paso county—ss. I hereby certify that this instrument was filed for record in my office at 3:05 o'clock p. m. Sept. 13, 1892, and is duly recorded in Book 153 page No. 232. (Signed) F. W. Howbert, recorder, ——, deputy. Fees, $1.00.

EXHIBIT 12, COMPLAINANT'S PROOFS.

No. 830.

Mining Deed.

The Gazette Printing Co., printers and manufacturing stationers, Colorado Springs, Colo.

This indenture, made the eighth day of April in the year of our Lord one thousand eight hundred and ninety-two, between C. E. Hudson of the county of El Paso and State of Colorado, party of the first part, and The Creede and Cripple Creek Mining and Milling Company, of the county of El Paso and State of Colorado, party of the second part,

Witnesseth: That the said party of the first part, for and in consideration of the sum of twenty thousand —/100 dollars, lawful money of the United States (*of the United States*) of America,
131 to her in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, remised, released, and forever quitclaimed, and by these presents does grant, bargain, sell remise, release, and forever quitclaim unto the said party of the second part, and to its heirs and assigns all interest which the said first (—) owns in the following eight lode mining claims, located in the Cripple Creek mining dis-

trict, El Paso county, Colorado, namely: The "Hillside" lode recorded Jan'y 14th, 1892 in Book 2 at page — the "East Lynne" lode, recorded Jan. 14th, 1892, in Book 2 at page — the "Little Doc" lode, recorded Feb'y 1st, 1892, in Book 2 at page — the "Little Mary" lode, recorded Feb'y 1st, 1892, in Book 2 at page — the "Ocean Wave" lode, recorded Feb'y 1st, 1892, in Book 2 at page — the "Sunset" lode recorded Feb'y 14th, (here "Jan. 14th" was evidently written and also "Feb'y 14th" and it looks as though "Feb'y 14th" was written last but is doubtful) 1892, in Book 2 at page — the "Snowflake" lode, recorded Feb'y 1st, 1892, in Book 2, at page — an- the "Evening Twilight" recorded Feb'y 1st, 1892, in Book 2, at page —.

All recorded on the records (*on the records*) of said El Paso county Colorado, and more particularly described in location certificates, duly recorded as above stated.

Together with all the dips, spurs, and angles, and also all the metals, ores, gold and silver bearing quartz, rock and earth therein, and all the rights, privileges, and franchises thereto incident, appendant, and appurtenant, or therewith usually had and enjoyed; and also all and singular the tenements, hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the rents, issues, and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof with the appurtenances.

To have and to hold, all and singular the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part its heirs and assigns forever.

In witness whereof, the said party of the first part has hereunto set her hand and seal the day and year first above written.

(Signed) C. E. HUDSON. [SEAL.]

Signed seal- and delivered in presence of—

—— ——.

—— ——.

132 (On back of the foregoing document was the following·)

STATE OF CALIFORNIA, } ss:
County of Santa Clara, }

I, Wm. F. Foss, a notary public in and for said county, in the State aforesaid, do hereby certify that C. A. Hudson who is personally known to me to be the person whose name is subscribed to the foregoing deed, appeared before me this day in person and (acknowledge-) that she signed, sealed, and delivered the said instrument of writing as her free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this eighth day of April, A. D. 1892.

My commission expires Oct. 21st, 1892.
[NOTARIAL SEAL.] (Signed) WM. F. FOSS,
Notary Public.

(The foregoing deed was endorsed as follows, to wit:)
Mining deed from C. E. Hudson to the Creede and Cripple Creek Mining and Milling Company. State of Colorado, county of El Paso—*ss.* I hereby certify that this instrument was filed for record in my office at 9.45 o'clock a. m., Apr. 12th, 189–. And is duly recorded in Book 142 page No. 381. F. W. Howbert, clerk and recorder, (by —— ——, deputy.) Fee, $90. The Gazette Printing Company, Colorado Springs, Colo.

133 EXHIBIT 13, COMPLAINANT'S PROOFS.

S-C (in ink). Copy.

828. *Amended Location Certificate, Rev.* 1890.

Out West Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, } *ss:*
County of El Paso, }

Know all men by these presents: That the "Creede and Cripple Creek Mining and Milling Company the undersigned, have this third day of September 1892 [190]* amended, located and claimed, and by these presents do amend, locate, and claim, by right of discovery and amended location, in compliance with the mining acts of Congress, approved May 10, 1872, and all subsequent acts, and with sec. 2409 of the General Laws of Colorado, and with local customs, laws, and regulations, fifteen hundred linear feet and horizontal measurement on the Ocean Wave lode, vein, ledge or deposit, along the vein thereof, with all its dips, angles, and variations, as allowed by law, together with one hundred and fifty feet on each side of the middle of said vein at the surface, so far as can be determined from present developments, and all veins, lodes, ledges, or deposits and surface ground within the lines of said claim, three hundred and ten (310) feet running N. 18° 30′ E. from center of discovery shaft and eleven hundred and ninety (1190) feet running S. 18° 30′ W. from center of discovery shaft said discovery shaft being situate upon said lode, vein, ledge, or deposit, and within the lines of said claim in Cripple Creek mining district, county of El Paso and State of Colorado, described by metes and bounds as follows, to wit:

Beginning at corner No. 1 N. E. running 300 feet N. 71° 30′ W. to cor. No. 2; thence 1500 ft. S. 18° 30′ W. to cor. No. 3; thence 300 ft. S. 71° 30′ E. to cor. No. 4; thence 1500 ft. N. 18° 30′ E. to beginning. Said lode is situated in sec. 29, T. 15, S. R. 69 W. parallel

[* Figures enclosed in brackets erased in copy.]

with and immediately east of Little Mary lode, and its surface lines are defined by six substantial posts planted in the ground.

From N. W. cor. No. 2 the N. W. cor. No. 2 of Little Mary lode bears N. 71° 30′ W. dist. 300 ft. Whence S. E. cor. sec. 19 bears N. 18° W. dist. 2510 ft., variation 14° 30′ E.

This being the same lode originally located on the second day of January, 1892, and recorded on the first day of February, 1892, in Book 2, page 113, in the office of the recorder of El Paso
134 county, this further and amended certificate of location is made without waiver of any previously acquired rights, but for the purpose of correcting any errors in the original location, description or record.

THE CREEDE AND CRIPPLE CREEK
MINING AND MILLING COMPANY. [SEAL.]
R. W. ANDERSON, *President.* [SEAL.]
H. E. BASSETT, *Sec't'y.* [SEAL.]

Said lode was discovered the — day of —— A. D. 18—.
Attest: —— ——.

Date of [amended]* location, Jan. 2, A. D. [190]* 1892.
Date of amended certificate, Sept. third A. D. [190]* 1892.

STEVENS & CANTER, *Sur's.*

Filed for record the 13 day of Sept. A. D. 1892 at 3:02 o'clock p. m.
F. W. HOWBERT, *Clerk.*

(The foregoing document was endorsed as follows:)

Amended location certificate. On the Ocean Wave mining claim of Creede and C. C. M. & M. Co. in Cripple Creek mining district, —— county, State of Colorado. State of Colorado, county of —— *ss.* I hereby certify that this amended location certificate was filed for record in my office at — o'clock — m. —— — 190– and is duly recorded in Book — page —. —— —— recorder. By —— —— deputy. Fees, $— Out West Printing and Stationery Co., Colorado Springs.

135 (Attached to the foregoing document was the following:)

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, }
County of El Paso, } *ss:*

[* Words and figures enclosed in brackets erased in copy.]

I, W. H. Reed county clerk and recorder in and for the aforesaid county and State, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain amended location certificate of the Ocean Wave Lode mining claim. Filed for record in my office at 3:02 o'clock p. m. Sept. 13, 1892, and duly recorded in Book No. 1 at page 147 of the records of this office, made from the original [paper.]* record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Colorado Springs, in said county and State, this 20th day of Jan. A. D. 1902.

[Seal El Paso County, Colorado.]

(Signed) W. H. REED,
County Clerk and Recorder,
By —— ——, *Deputy.*

(The foregoing certification endorsed as follows:)
Certificate of copy of — made from — record, page — — day of ——, A. D. 190–.

EXHIBIT 14, COMPLAINANT'S PROOFS.

S-C (in ink). Copy.

828. *Amended Location Certificate, Rev.* 1890.

Out West Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, } ss:
County of El Paso, }

Know all men by these presents: That the "Creede and Cripple Creek Mining and Milling Company the undersigned, have this third day of September 1892 amended, located and claimed, and by these presents do amend, locate, and claim, by right of dis-
136 covery and amended location, in compliance with the mining acts of Congress, approved May 10, 1872, and all subsequent acts, and with sec. 2409 of the General Laws of Colorado, and with local customs, laws, and regulations, fifteen hundred linear feet and horizontal measurement on the Little Mary lode, vein, ledge or deposit, along the vein thereof, with all its dips, angles, and variations, as allowed by law, together with one hundred and fifty feet on each side of the middle of said vein at the surface, so far as can be determined from present developments; and all veins, lodes, ledges, or deposits and surface ground within the lines of said claim, three hundred and ten (310) feet running N. 18° 30′ E. from center of discovery shaft and eleven hundred and ninety (1190) feet running

[* Word enclosed in brackets erased in copy.]

S. 18° 30′ W. from center of discovery shaft, said discovery shaft being situate upon said lode, vein, ledge, or deposit, and within the lines of said claim in Cripple Creek mining district, county of El Paso and State of Colorado, described by metes and bounds as follows, to wit:

Beginning at corner No. 1 (N. E.) running 300 ft. N. 71° 30′ W. to cor. No. 2; thence 1500 ft. S. 18° 30′ W. to cor. No. 3; thence 300 ft. S. 71° 30′ E. to cor. No. 4; thence 1500 ft. N. 18° 30′ E. to beginning. Said lode is situated in sec. 29, T. 15, S. R. 69 W. and its surface lines are defined by six substantial posts planted in the ground. Said lode is parallel with and immediately on the west side of "Ocean Wave lode."

From the N. W. cor. No. 2 the sec. cor. of secs. 19, 20, 29 & 30 bears N. 18° W. dist. 2510 ft. Variation 14° 30′ E.

This being the same lode originally located on the second day of January, 1892, and recorded on the first day of February, 1892, in Book 2, page 113, in the office of the recorder of El Paso county, this further and amended certificate of location is made without waiver of any previously acquired rights, but for the purpose of correcting any errors in the original location, description or record.

THE CREEDE AND CRIPPLE CREEK MINING AND MILLING COMPANY. [SEAL.]
R. W. ANDERSON, *President.* [SEAL.]
H. E. BASSETT, *Sec't'y.* [SEAL.]

Said lode was discovered the — day of —— A. D. 18—.
Attest: —— ——.

Date of [amended]* location, Jan. 2, A. D. [190]* 1892.
Date of amended certificate, Sept. third A. D. [190]* 1892.

STEVENS & CANTER, *Sur's.*

137 Filed for record the 13 day of Sept. A. D. 1892 at 3:01 o'clock p. m.

F. W. HOWBERT, *Clerk.*

(The foregoing document was endorsed as follows:)

Amended location certificate. On the Little Mary mining claim of Creede and C. Ck. M. & M. Co. in Cripple Creek mining district, —— county, State of Colorado. State of Colorado, county of ——, *ss.* I hereby certify that this amended location certificate was filed for record in my office at — o'clock — m. —— 190– and is duly recorded in Book — page —. —— —— recorder. By —— —— deputy. Fees, $—. Out West Printing and Stationery Co., Colorado Springs, Colo.

(Attached to the foregoing document was the following:)

[* Words and figures enclosed in brackets erased in copy.]

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs. Colo.

STATE OF COLORADO, } ss:
County of El Paso, }

I, W. H. Reed, county clerk and recorder in and for the aforesaid county and State, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain amended location certificate of the Little Mary Lode mining claim. Filed for record in my office at 3:01 o'clock p. m. Sept. 13, 1892, and duly recorded in Book No. 1 at page 147 of the records of this office, made from the original [paper.]* record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Colorado Springs, in said county and State, this 20th day of Jan. A. D. 1902.

[Seal El Paso County, Colorado.]

(Signed) W. H. REED,
County Clerk and Recorder,
By —— ——, *Deputy.*

138 (The foregoing certification endorsed as follows:)
Certificate of copy of — made from — Record, page — — day of —— A. D. 190–.

EXHIBIT 15, COMPLAINANT'S PROOFS.

(In pencil:) 5 744.

(Stamped in red ink:) L. E. Sherman, Colorado Springs, Colo.

(4–462.)

General Land Office, No. 23744. Mineral certificate, No. 338.

The United States of America to all to whom these presents shall come, Greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two and legislation supplemental thereto, there have been deposited in the General Land Office of the United States the plat and field notes of survey and the

[* Words enclosed in brackets erased in copy.]

certificate No. 338, of the register of the land office at Pueblo, in the State of Colorado, accompanied by other evidence whereby it appears that the Creede and Cripple Creek Mining and Milling Company did, on the fifth day of August, A. D. 1893, duly enter and pay for that certain mining claim or premises, known as the Ocean Wave and Little Mary Lode mining claims designated by the surveyor-general as lot No. 8192, embracing a portion of section twenty-nine, in township fifteen south of range sixty-nine west, sixth principal meridian in the Cripple Creek mining district, in the county of El Paso and State of Colorado, in the district of lands subject to sale at Pueblo and bounded, described, and platted as follows, with magnetic variation as hereinafter stated.

Beginning for the description of the Ocean Wave Lode claim at corner No. 1, a pine post seven inches square marked 11 / 8192, with mound of stone, from which the south quarter corner of section twenty-nine, in township fifteen south of range sixty-nine west, sixth principal meridian, bears south thirty degrees and fifty-eight minutes east four thousand and forty-five and six tenths feet distant; corner No. 2 of survey No. 7968, the Coriolanus Lode claim, bears south fourteen degrees and five minutes east four hundred
139 and seven and seventy-nine hundredths feet distant; corner No. 3 of survey No. 7822, the Eclipse Lode claim, bears north thirty-seven degrees and fifty-six minutes east two hundred and sixty-two and five hundredths feet distant, and discovery shaft bears south four degrees and thirty-nine minutes east three hundred and sixty-four feet distant.

Thence, first course, magnetic variation thirteen degrees and ten minutes east, south seventy-three degrees and seven minutes east, two hundred and ninety feet to corner No. 2.

Thence second course, magnetic variation thirteen degrees and ten minutes east, south seventeen degrees and fifty-eight minutes west three hundred and seventy-five and fifty-four hundredths feet intersect line 1–2 of said survey No. 7968 at south fifty-three degrees and forty minutes east seventy-seven and five tenths feet from corner No. 2; five hundred and sixty-one and thirty-one hundredths feet to corner No. 3.

Thence, third course, magnetic variation thirteen degrees and fifteen minutes east, north seventy-three degrees and seven minutes west one hundred and fifty feet intersect line 2–3 of said survey No. 7968 at south thirty-seven degrees and forty-two minutes west two hundred and twenty-six and thirty-two hundredths feet from corner No. 2; two hundred and ninety feet to corner No. 4.

Thence fourth course, magnetic variation thirteen degrees and fifteen minutes east, north seventeen degrees and fifty-eight minutes east five hundred and sixty-one and thirty-one hundredths feet to corner No. 1, the place of beginning; the survey of the lode as above described extending five hundred and sixty-one and thirty-one hundredths feet in length along said Ocean Wave vein or lode.

Beginning for the description of the Little Mary Lode claim at

corner No. 1, being identical with corner No. 1 of said Ocean Wave Lode claim.

Thence, first course, magnetic variation thirteen degrees and ten minutes east, north seventy-three degrees and seven minutes west two hundred and thirty-seven and nineteen hundredths feet intersect line 3–4 of said survey No. 7822, two hundred and sixty-two and thirty-two hundredths feet to corner No. 2 from which discovery shaft bears south fourteen degrees and thirty-two minutes east two hundred and sixty-eight and eight-tenths feet distant.

Thence, second course, magnetic variation thirteen degrees and ten minutes east, south nineteen degrees and twenty-four minutes west nineteen and nineteen hundredths feet intersect line 3–4 of said survey No. 7822; eight hundred and thirty-eight and twenty-
140 six hundredths feet intersect line 4–1 of survey No. 7476, the Carbonate Queen Lode claim, one thousand one hundred and sixty-one and sixty-three hundredths feet to corner No. 3.

Thence, third course, magnetic variation thirteen degrees and forty minutes east, south seventy-three degrees and seven minutes east one hundred and fifty feet intersect line 4–1 of said survey No. 7476; two hundred and fifteen and seventeen hundredths feet intersect line 2–3 of said survey No. 7968; two hundred and ninety-one and sixty-nine hundredths feet to corner No. 4.

Thence, fourth course, magnetic variation thirteen degrees and forty minutes east, north seventeen degrees and fifty-eight minutes east two hundred and eleven and ninety-three hundredths feet intersect line 2–3 of said survey No. 7968; five hundred and ninety-nine and three tenths feet to corner No. 4 of said Ocean Wave Lode claim; one thousand one hundred and sixty and eighty-one hundredths feet to corner No. 1, the place of beginning; the survey of the lode as above described extending one thousand one hundred and sixty-one and sixty-three hundredths feet in length along said Little Mary vein or lode. Expressly excepting and excluding from these presents all that portion of the ground, hereinbefore described, embraced in said mining claims or surveys Nos. 7476, 7822, and 7968, and also all veins, lodes, and ledges throughout their entire depth, the tops or apexes of which lie inside of such excluded ground; the granted premises in said lot No. 8192 containing nine acres and eighty-five hundredths of an acre of land more or less.

Now know ye, that there is therefore hereby granted by the United States unto the said The Creede and Cripple Creek Mining and Milling Company and to its successors and assigns, the said mining premises hereinbefore described, and not expressly excepted from these presents, and all that portion of the said Ocean Wave and Little Mary veins, lodes, or ledges, and of all other veins, lodes, and ledges, throughout their entire depth, the tops or apexes of which lie inside of the surface boundary lines of said granted premises in said lot No. 8192 extended downward vertically, although such veins, lodes, or ledges in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said premises.

Provided, that the right of posseesion to such outside parts of said veins, lodes or ledges, shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said lot No. 8192, so continued in their own direction that
141 such planes will intersect such exterior parts of said veins, lodes, or ledges: And provided further that nothing herein contained shall authorize the grantee herein to enter upon the surface of a claim owned or possessed by another.

To have and to hold said mining premises, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging unto the said grantee above named and to its successors and assigns forever; subject nevertheless to the above mentioned and to the following conditions and stipulations.

First. That the premises hereby granted, with the exception of the surface, may be entered by the proprietor of any other vein, lode, or ledge, the top or apex of which lies outside of the boundary of said granted premises, should the same in its dip be found to penetrate, intersect, or extend into said premises, for the purpose of extracting and removing the ore from such other vein, lode, or ledge.

Second. That the premises hereby granted shall be held subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs, and decisions of the courts. And there is reserved from the lands hereby granted, a right of way thereon for ditches or canals constructed by the authority of the United States.

Third. That in the absence of necessary legislation by Congress the legislature of Colorado may provide rules for working the mining claim or premises hereby granted, involving easements, drainage, and other necessary means to its complete development.

In testimony whereof, I, Grover Cleveland, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington the twenty-first day of December in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and eighteenth.

By the President:

GROVER CLEVELAND,
By M. McKEAN, *Secretary.*
L. Q. C. LAMAR,
Recorder of the General Land Office.

Recorded Vol. 242, pages 356 to 360 inclusive.

142 (The foregoing document was endorsed as follows:)
3658. M. E. 338. Ocean Wave and Little Mary lodes

State of Colorado, county of El Paso—ss. I hereby certify that this instrument was filed for record in my office at 3.20 o'clock p. m., March 10, 1894, and is duly recorded in Book 173, page 16. F. W. Howbert, recorder. 1.50 pd. Filed Mar. 21, 1898. Robert Bailey, clerk. Robert Bailey clerk. (in pencil) for compl't.

DEFENDANT'S EXHIBITS.

EXHIBIT A, DEFENDANT'S PROOFS.

This exhibit is a map and is separate from the bill of exceptions, being too large to be bound herewith.

EXHIBIT B, DEFENDANT'S PROOFS.

Y-R (in red ink.) Copy.

No. 53139.

Location Certificate Uinta Tunnel No. 23 Lode by Jas. Doyle.

Filed for Record at 11.30 a. m., Mar. 2, 1898. W. T. Liggett, Recorder.

STATE OF COLORADO, } ss:
County of El Paso, }

Know all men by these presents, that we, The Uinta Tunnel Mining and Transportation Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa and a citizen of the State of Iowa, and of the United States, claims by right of discovery and by right of location, fifteen hundred (1500) feet linear and horizontal measurement on the Uinta Tunnel No. 23 lode, along the vein thereof, with all its dips, spurs, angles, and variations, together with the amount of surface necessary for working the same, and allowed by law, to wit: 150 ft. on each side of discovery, 1200 feet of said lode so located lying and being S. 50° 30′ E. of the discovery of said lode and 300 feet being N. 50° 30′ W. of said discovery, said lode being more particularly described as follows, to wit:

Beginning at a point in the Uinta tunnel, a tunnel owned by the undersigned, The Uinta Tunnel Mining and Transportation Company, and duly located and prosecuted under and in pursuance of section 2323 of the Revised Statutes of the United States 1921 feet from the face of said tunnel, and extending from said point 1200 feet S. 50° 30′ E. and 300 feet N. 50° 30′ W. the bearing of said lode is about N. 50 degrees 30′ W. This lode was discovered in the said Uinta tunnel and is claimed under the provisions of section
143 4 of an act of Congress approved May 10, 1872, and being section 2323 of the Revised Statutes of the United States, and

all acts amendatory thereof, in the Cripple Creek mining district' county of El Paso, and State of Colorado.

Said lode was discovered and was located on the 18th day of December, A. D. 1897. And the said Uinta Tunnel Mining and Transportation Company claims priority of title to and right of possession of said vein, lode, ledge, and deposit, with its dips, spurs, and angles, to the extent above defined as of and from the 13th day of January, A. D. 1892, the day when said tunnel site location of said Uinta tunnel was originally made, and so claims the same by virtue of a full compliance with the statutes of the United States, and of the State of Colorado, with reference to the making of tunnel site locations under section 2323 of the Revised Statutes of the United States.

THE UINTA TUNNEL, MINING AND TRANSPORTATION CO.,
By JAMES DOYLE, *President.*

Attest: THOMAS J. MALONEY, *Secretary.*

Tunnel located, Jan'y 13, 1892.
Lode cut and discovered Dec. 18, 1897.
Date of location Dec. 18, 1897.
Date of certificate February 25, 1898.

(Attached to the foregoing document was the following:)

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs, Colo

STATE OF COLORADO, } ss:
County of El Paso, }

I, W. H. Reed, county clerk and recorder in and for the aforesaid county and State, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain location certificate of the Uinta Tunnel No. 23 lode. Filed for record in my office at 11:30 o'clock a. m. March 2, 1898, and duly recorded in Book No. 278, at page 18 of the records of this office made from the original [paper.]* record.

144 In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Colorado Springs, in said county and State, this sixteenth day of January, A. D. 1902.

[Seal El Paso County, Colorado.]

(Signed) W. H. REED,
County Clerk and Recorder,
By —— ——, *Deputy.*

[* Word enclosed in brackets erased in copy.]

(The foregoing certification endorsed as follows:)
Certificate of copy of — made from — record, page — this — day of —— A. D. 190–.

EXHIBIT C, DEFENDANT'S PROOFS.

Y-R. (in red ink). Copy.

No. 53140.

Location Certificate, Uinta Tunnel No. 24 Lode, by Jas. Doyle.

Filed for Record at 11:31 a. m. March 2, 1898. W. T. Liggett, Recorder.

STATE OF COLORADO, } ss:
County of El Paso. }

Know all men by these presents, that we, The Uinta Tunnel Mining and Transportation Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa, and a citizen of the State of Iowa, and of the United States, claims by right of discovery and by right of location fifteen hundred (1500) feet linear and horizontal measurement on the Uinta Tunnel No. 24 lode along the vein thereof, with all its dips, spurs, angles and variations, together with the amount of surface necessary for working the same and allowed by law, to wit: 150 ft. on each side of discovery 750 feet of said lode so located lying and being S. 79° 0′ E. of the discovery of said lode and 750 feet being N. 79° 0′ W. of said discovery, said lode being more particularly described as follows, to wit:

Beginning at a point in the Uinta tunnel, a tunnel owned by the undersigned, The Uinta Tunnel Mining and Transportation Company, and duly located and prosecuted under and in pursuance of section 2323 of the Revised Statutes of the United States
145 2102 5/ feet from the face of said tunnel, and extending from said point 750 feet S. 79° E. and 750 feet N. 79° W. the bearing of said lode is about S. 79 degrees E. This lode was discovered in the said Uinta tunnel, and is claimed under the provisions of section 4 of an act of Congress approved May 10, 1872, and being section 2323 of the Revised Statutes of the United States and all acts amendatory thereof in the Cripple Creek mining district, county of El Paso and State of Colorado.

Said lode was discovered and was located on Dec. 23rd, A. D. 1897. And the said Uinta Tunnel, Mining and Transportation Company claims priority of title to and right of possession of said vein, lode, ledge, and deposit, with its dips, spurs, and angles, to the extent above defined as of and from the 13th day of January, A. D. 1892, the day when said tunnel site location of said Uinta tunnel

was originally made, and so claims the same by virtue of a full compliance with the statutes of the United States, and of the State of Colorado, with reference to the making of tunnel site locations under section 2323 of the Revised Statutes of the United States.

THE UINTA TUNNEL, MINING AND TRANSPORTATION CO.,
By —— ——, *President.*

Attest: THOMAS J. MALONEY, *Secretary.*

Tunnel located Jan'y 13, 1892.
Lode cut and discovered Dec. 23, 1897.
Date of location Dec. 23, 1897.
Date of certificate Feb'y 25, 1898.

(Attached to the foregoing document was the following:)

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs, Colo

STATE OF COLORADO, } ss:
County of El Paso, }

I, W. H. Reed, county clerk and recorder in and for the aforesaid county and State, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain location certificate of the Uinta Tunnel No. 24 lode. Filed for record in my office at 11.31 o'clock a. m. March 2, 1898, and duly recorded in Book No. 278, at page 19 of the records of this office. made from the original [paper.]* record.

146 In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Colorado Springs, in said county and State, this sixteenth day of January, A. D. 1902.

[Seal El Paso County, Colorado.]

(Signed) W. H. REED,
County Clerk and Recorder,
By —— ——, *Deputy.*

(The foregoing certification endorsed as follows:)
Certificate of copy of — made from — record, page —, this — day of —— A. D. 190–.

EXHIBIT D, DEFENDANT'S PROOFS.

Y-R (in red ink). Copy.

[* Word enclosed in brackets erased in copy.]

No. 53141.

Location Certificate, Uinta Tunnel No. 25 Lode, J. Doyle.

Filed for Record at 11.32 a. m., March 2, 1898. W. T. Liggett, Recorder.

STATE OF COLORADO, } ss:
County of El Paso, }

Know all men by these presents, that we, The Uinta Tunnel Mining and Transportation Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa, and a citizen of the State of Iowa, and of the United States, claims by right of discovery and by right of location, fifteen hundred (1500) feet linear and horizontal measurement on the Uinta Tunnel No. 25 lode along the vein thereof, with all its dips, spurs, angles, and variations, together with the amount of surface necessary for working the same and allowed by law, to wit: 150 ft. on each side of the discovery; 750 feet of said lode so located lying and being N. 26° 15′ W. of the discovery of said lode and 750 feet being S. 26° 15′ E. of said discovery, said lode being more particularly described as follows, to wit:

Beginning at a point in the Uinta tunnel, a tunnel owned by the undersigned, The Uinta Tunnel, Mining and Transportation Company and duly located and prosecuted under and in pursu-
147 ance of section 2323 of the Revised Statutes of the United States 2118 feet from the face of said tunnel, and extending from said point 750 feet N. 26° 15′ W. and 750 feet S. 26° 15′ E. the bearing of said lode is about N. 26 degrees 15′ W.

This lode was discovered in the said Uinta tunnel and is claimed under the provisions of section 4 of an act of Congress approved May 10, 1872, and being section 2323 of the Revised Statutes of the United States, and all acts amendatory thereof, in the Cripple Creek mining district, county of El Paso and State of Colorado.

Said lode was discovered and was located on the 6th day of January, A. D. 1898.

And the said Uinta Tunnel, Mining and Transportation Company claims priority of title to and right of possession of said vein, lode, ledge, and deposit with its dips, spurs, and angles, to the extent above defined, as of and from the 13th day of January, A. D. 1892, the day when said tunnel site location of said Uinta tunnel was originally made, and so claims the same by virtue of a full compliance with the statutes of the United States, and of the State of Colorado, with reference to the making of tunnel site locations under section 2323 of the Revised Statutes of the United States.

THE UINTA TUNNEL, MINING AND TRANSPORTATION CO.,
By JAMES DOYLE, *President.*

Attest: THOMAS J. MALONEY, *Secretary.*

Tunnel located Jan'y 13, 1892.
Lode cut and discovered Jan'y 6, 1898.
Date of location Jan'y 6, 1898.
Date of certificate Feb'y 25, 1898.

(Attached to the foregoing document was the following:)

440—Special.

Certificate of Copy.

The Outwest Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, } ss:
County of El Paso, }

I, W. H. Reed, county clerk and recorder in and for the aforesaid county and State, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain location certificate of the Uinta Tunnel No. 25 lode. Filed for record in my office at
148 11:32 a. m. March 2, 1898, and duly recorded in Book 278 at page 20 of the records of this office. made from the original [paper.]* record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Colorado Springs, in said county and State, this sixteenth day of January, A. D. 1902.

[Seal El Paso County, Colorado.]

(Signed) W. H. REED,
County Clerk and Recorder,
By —— ——, *Deputy.*

(The foregoing certification endorsed as follows:)
Certificate of copy of — made from — record, page — this — day of —— A. D. 190–.

EXHIBIT E, DEFENDANT'S PROOFS.

Y-R (in red ink). Copy.

No. 53142.

Location Certificate, Uinta Tunnel No. 26 Lode. Jas. Doyle.

Filed for Record at 11:33 a. m. March 2, 1898. W. T. Liggett, Recorder.

[*Word enclosed in brackets erased in copy.]

STATE OF COLORADO, } ss:
County of El Paso, }

Know all men by these presents, that we, The Uinta Tunnel Mining and Transportation Company, a corporation organized and existing under and by virtue of the laws of the State of Iowa, and a citizen of the State of Iowa, and of the United States, claims by right of discovery and by right of location, fifteen hundred (1,500) feet linear and horizontal measurement on the Uinta Tunnel No. 26 lode, along the vein thereof, with all its dips, spurs, angles, and variations, together with the amount of surface necessary for working the same and allowed by law, to-wit: 150 ft. on each side of the discovery 1000 feet of said lode so located lying and being N. 11° 45′ W. of the discovery, of said lode and 500 feet being S. 11° 45′ E. of said discovery, said lode being more particularly described as follows, to wit:

(Be-ing) at a point in the Uinta tunnel, a tunnel owned by the undersigned, the Uinta Tunnel, Mining and Transportation
149 Company, and duly located and prosecuted under and in pursuance of section 2323 of the Revised Statutes of the United States 2181 feet from the face of said tunnel, and extending from said point 1000 feet N. 11° 45′ W. and 500 feet S. 11° 45′ E. The bearing of said lode is about S. 11 degrees 45′ E. This lode was discovered in the said Uinta tunnel, and is claimed under the provisions of section 4 of an act of Congress approved May 10, 1872, and being section 2323 of the Revised Statutes of the United States, and all acts amendatory thereof, in the Cripple Creek mining district, county of El Paso and State of Colorado.

Said lode was discovered and was located on the 15th day of December, A. D. 1897, and the said Uinta Tunnel, Mining and Transportation Company claims priority of title to and right of possession of said vein lode ledge and deposit, with its dips, spurs, and angles to the extent above defined, as of and from the 13 day of January, A. D. 1892, the day when said tunnel site location of said Uinta tunnel was originally made, and so claims the same by virtue of a full compliance with the statutes of the United States and of the State of Colorado, with reference to the making of tunnel site locations under section 2323 of the Revised Statutes of the United States.

THE UINTA TUNNEL, MINING AND TRANSPORTATION CO.,
By JAMES DOYLE, *President.*

Attest: THOMAS J. MALONEY, *Secretary.*

Tunnel located Jan'y 13, 1892.
Lode cut and discovered Dec. 15, 1897.
Date of location Dec. 15, 1897.
Date of certificate Feb'y 25, 1898.

(Attached to the foregoing document was the following:)
18—219

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, } ss:
County of El Paso, }

I, W. H. Reed, county clerk and recorder in and for the aforesaid county and State, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain location certificate of the Uinta Tunnel No. 26 lode. Filed for record in my office at
150 11:33 o'clock a. m. March 2, 1898, and duly recorded in Book No. 278, at page 20 of the records of this office. made from the original [paper.]* record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Colorado Springs, in said county and State, this sixteenth day of Jan. A. D. 1902.

(Signed) W. H. REED,
County Clerk and Recorder,
By —— ——, *Deputy.*

[Seal El Paso County, Colorado.]

(The foregoing certification endorsed as follows:)
Certificate of copy of — made from — record, page — this — day of —— A. D. 190–.

EXHIBIT F, DEFENDANT'S PROOFS.

Y–R. (in red ink). Copy.

Location Certificate, Uinta Tunnel Claim, to W. R. Mason et al.

Filed for Record at 8:37 a. m., February 25, 1892. F. W. Howbert, Recorder.

Location certificate Uinta Tunnel claim.

Know all men by these presents, that the undersigned citizens of the United States, have this eighteenth day of February, 1892, claimed by right of location a tunnel claim for the purpose of discovering and working veins, lodes or deposits on the line thereof (cutting the Eclipse lode and working the Eclipse lode) said tunnel claim is situated in the Cripple Creek mining district county of El Paso, State of Colorado, and the location and bounds of said tunnel are staked on the surface at the place of commencement and termi-

[* Word enclosed in brackets erased in copy.]

nation thereof as well as along the line thereof, said claim is more particularly described as follows:

Beginning at corner No. 1 being the N. E. corner; whence an aspen tree 8 inches in diameter bears S. 55° E. distant 43 feet; thence S. 39° 30′ W. (750) seven hundred and fifty feet to commencement of tunnel; thence same course (750) seven hundred and fifty feet to corner No. 2 whence a spruce tree 14 inches
151 in diameter bears N. 87° W. distant 12 feet; thence S. 50° 30′ E. (3000) three thousand feet to corner No. 3; thence N. 39° 30′ E. (750) seven hundred and fifty feet to termination of said (tcunnel); thence same course (750) seven hundred and fifty feet to corner No. 4; thence N. 50° 30′ W. (3000) three thousand feet to place of beginning. On the end lines posts are set at each 375 feet and on the side line between corners No. 2 and 3 post- are set at each 330 feet and marked the distance from the N. W. corner No. 2 and between corners numbered 4 and 1 posts are set at each 330 feet and the distance marked from corner No. 4, S. E. cor. from the N. E. corner No. 1 the section corner to section- 18, 20, 29, 30 bears N. 34° W. distant 1275 feet being a part of sections 29 and 30, township 15 south range 69 west of the sixth principal meridian. Variation 14° 30′ east.

W. R. MASON. [SEAL.]
WM. E. HALL. [SEAL.]
HERMAN TEITJA. [SEAL.]

STATE OF COLORADO, } ss:
El Paso County, }

William E. Hall being by me first duly sworn on his oath says he is one of the parties whose names appear in the above location certificate; that on the 13″ day of Jan'y, 1892, affiant together with W. R. Mason and Herman Teieja the co-owners of the above claim located the above tunnel site by posting in a conspicuous place and at the entrance of said tunnel a notice in writing of their intention to claim and work said tunnel site; that they, the above named parties have performed work in said tunnel to the value of $270.00 in driving said tunnel and $80.00 in furnishing and putting in the timbers in said tunnel; that it is *bona fide* the intention of this affiant to prosecute the work on this tunnel with diligence and dispatch for the discovery of veins or lodes and for mining purposes.

Subscribed and sworn to before me this 20 day of Feb'y, 1892.

[NOTARIAL SEAL.] JOHN F. DOWNELL,
Notary Public.

My commission expires Jan. 20, 1896.

(Attached to the foregoing document was the following:)

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, } ss:
County of El Paso, }

I, W. H. Reed, county clerk and recorder in and for the afore-
152 said county and State do hereby certify that the within and foregoing is a full, true, and correct copy of a certain location certificate of the Uinta Tunnel claim. Filed for record in my office at 8.37 o'clock a. m. February 25, 1892, and duly recorded in Book No. 79 at page 492 of the records of this office. made from the original [paper.]* record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Colorado Springs, in said county and State, this sixteenth day of January, A. D. 1902.

(Signed) W. H. REED,
County Clerk and Recorder,
By —— ——, *Deputy.*

[Seal El Paso County, Colorado.]

(The foregoing certification — endorsed as follows:)
Certificate of copy of — made from — record, page —, this —day of —— A. D. 1900.

EXHIBIT G, DEFENDANT'S PROOFS.

Y–R. (in red ink). Copy.

827. *Location Certificate.*

The Outwest Printing and Stationery Co., Colorado Springs, Colo.

34502.

STATE OF COLORADO, } ss:
County of El Paso, }

Know all men by these presents, that Vance Carothers the undersigned has this 2nd day of February, 1897, 190– located and claimed, and by these presents does locate and claim, by right of discovery and location, in compliance with the mining acts of Congress approved May 10, 1872, and all subsequent acts, and with local customs, laws, and regulations 1500 linear feet and horizontal measurement on the Black Jasper lode, vein, ledge, or deposit, along

[* Word enclosed in brackets erased in copy.]

the vein thereof, with all its dips, angles, and variations, as allowed by law, together with 150 feet on the north [feet on each]* side of the middle of said vein, at the surface, so far as can be determined from present developments; and all veins, lodes,
153 ledges, or deposits and surface ground, within the lines of said claim 30 feet running S. (N. is written in lead pencil over this) 61° 14′ E. (W. is written in lead pencil over this) from center of discovery shaft, and 1470 feet running N. (S. is written in lead pencil over this) 61° 14′ W. (E. is written in lead pencil over this) from center of discovery shaft; said discovery shaft being situate upon said lode, vein, ledge, or deposit, and within the lines of said claim, in the Cripple Creek mining district, county of El Paso and State of Colorado, described by metes and bounds as follows, to wit:

side and 150 feet on the south

Beginning at corner No 1 (the N. E. cor.) thence N. 61° 14′ W. 1500 ft. to N. W. cor. No. 2; thence S. 4° 46′ W. 328.4 ft. to S. W. cor. No. 3; thence S. 61° 14′ E. 1500 ft. to S. E. cor. No. 4; thence N. 4° 46′ E. 328.4 ft. to N. E. cor. No. 1 the place of beginning cor. No. 4 of Sur. No. 8673 Little Harry lode bears N. 38° 57′ W. distant 173 ft. from S. E. cor. No. 4 of claim Nipple mountain bears S. 6° 06′ E. from S. E. cor. No. 4 of claim.

Big Bull mountain bears S. 83° 25′ E. from S. E. cor. No. 4 of claim.

Variation 13° 30′ east.

VANCE CAROTHERS. [SEAL.]

Said lode was discovered on the 30th day of January, A. D. [190]* 1897.

Attest: —— ——.

1897.

Date of location, Jan'y 30th, A. D. [190–]*

Date of certificate, February 2nd, A. D. [190–]* 1897.

Filed for record the 2 day of Feb. A. D. 1897 at 2:40 o'clock p. m.

J. W. BATES, *Clerk.*

(The foregoing document was endorsed as follows:)

Location certificate on the —— mining claim of —— in —— mining district —— county, State of Colorado. State of Colorado, county of —— *ss.* I hereby certify that this location certificate was filed for record in my office at — o'clock — m. — 190– and is duly recorded in Book — at page —. —— —— recorder, by —— —— deputy. Fees, $—.

154 (Attached to the foregoing location certificate was the following:)

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

[* Words and figures enclosed in brackets erased in copy.]

STATE OF COLORADO, } ss:
County of El Paso, }

I, W. H. Reed, county clerk and recorder in and for the aforesaid county and State, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain location certificate of the Black Jasper Lode mining claim. Filed for record in my office at 2:40 o'clock p. m. Feb. 2, 1897, and duly recorded in Book No. 34, at page 199 of the records of this office made from the original [paper.]* record.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at my office in Colorado Springs, in said county and State, this sixteenth day of January, A. D. 1902.

[Seal El Paso County, Colorado.]

(Signed) W. H. REED,
County Clerk and Recorder,
By —— ——, *Deputy.*

(The foregoing certification endorsed as follows:)
Certificate of copy of — made from — record page — this — day of —— A. D. 190–.

EXHIBIT H, DEFENDANT'S PROOFS.

Y-R (in red ink). Copy.

827 c. *Location Certificate.*

Lode Claim—D. N. Form.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

Know all men by these presents, that we, S. P. Chalfant, Teitija, Wm. E. Hall and W. J. Chambers, of the county of El Paso, in the State of Colorado, claim by right of discovery and location 1500 feet linear and horizontal measurement on the Uinta Tunnel lode No. 1 [lode]* along the vein thereof with all its dips, variations and angles; together with 150 feet in width on each side of the middle of said vein at the surface; and all veins, lodes, ledges, deposits, and surface ground within the lines of said claim; 300 ft. *feet* on
155 said lode running N. 17° W. from the center of the discovery shaft, and 1200 feet running S. 17° E.; from said center of discovery shaft. [Said claim is situated on the]* — in Cripple Creek mining district, county of El Paso and State of Colorado and is bounded and described as follows:

Beginning at cor. No. 1 whence an aspen 12 ins. diam. bears N. 10° W. 10 ft.; thence S. 73° W. 300 ft. to cor. No. 2; whence an aspen 8 ins. diam. bears S. 11° W. 101.5 ft.; thence S. 17° E. 750 ft.

[* Word enclosed in brackets erased in copy.]

to stake 1500 ft. to cor. No. 3; whence an aspen 3" *ins.* diam. bears S. 10° E. 2 ft.; thence N. 73° E. 300 ft. to cor. No. 4 whence a spruce 12 ins. diam. bears west 15 ft.; thence N. 17° W. 750 ft. to stake 1500 ft. to cor. No. 4 the place of beginning.

Va. 13° 35′ E. Said lode is situate at southern head of Arequa gulch or near it. The north end stakes are in the gulch and lode claim runs almost to top of mountain on south of gulch.

S. P. CHALFANT. 3/24. [SEAL.]
HERM AN TEITIJA. 4/24. [SEAL.]
WM. E. HALL. 14/24. [SEAL.]
W. J. CHAMBERS. 3/24. [SEAL.]

Said lode was discovered on the 15th day of August, A. D. 1892.
Date of location, Sept. 2nd, A. D. 1892.
Date of certificate Sept. 2nd, A. D. 1892.
Attest: THOMAS WITHERS,
U. S. Dep. Min. Surveyor.

Filed for record the 11 day of Oct. A. D. 1892, at 3:46 o'clock p. m.

F. W. HOWBERT, *Clerk.*

(The foregoing document was endorsed as follows:)
Location certificate —— lode State of Colorado, county of —— ss. Office of county clerk and recorder: I hereby certify that the within instrument was filed in this office for record at — o'clock — m —— A. D. 1—, and was duly recorded in Book No. — page No. — —— —— recorder. —— —— deputy. Fees, $— The Out West Printing and Stationery Co., Colorado Springs, Colo.

156 (Attached to the foregoing location certificate was the following:)

440—Special.

Certificate of Copy.

The Out West Printing and Stationery Co., Colorado Springs, Colo.

STATE OF COLORADO, } ss:
County of El Paso, }

I, W. H. Reed, county clerk and recorder in and for the aforesaid county and State, do hereby certify that the within and foregoing is a full, true, and correct copy of a certain location certificate of the Uinta Tunnel lode No. 1, filed for record in my office at 3:46 p. m. Oct. 11, 1892, and duly recorded in Book No. 7 at page 22 of the records of this office. made from the original [paper.]* record.

In testimony whereof, I have hereunto set my hand and affixed

[* Word enclosed in brackets erased in copy.]

my official seal, at my office in Colorado Springs, in said county and State, this 27th day of Jan. A. D. 1902.

[Seal El Paso County, Colorado.]

(Signed) W. H. REED,
County Clerk and Recorder,
By —— ——, *Deputy.*

(The foregoing certification endorsed as follows:)
Certificate of copy of — Made from — record, page — this — day of —— A. D. 190–.

And the foregoing is all the evidence admitted or offered upon the trial of said cause.

Thereupon the defendant presented in writing the following requests for instructions to the jury:

If the jury believe from the evidence that defendant for more than a year prior to the time of instituting this action, was extending its tunnel through and beyond the property claimed by plaintiff, and that in so doing the defendant expended large sums of money for machinery and labor, and that all thereof was done with the full knowledge of plaintiff, and without any objection from or protest on the part of plaintiff, until long after defendant had driven the bore of its tunnel a distance of about twenty-two hundred
157 feet, when defendant discovered and uncovered a vein of ore in mineral on the line of its tunnel, not previously known to exist, and had commenced to mine, extract, ship, and sell rich and valuable ore and mineral therefrom, making no other or further claim to the Little Mary or Ocean Wave lode and mining claim, except the right of entry and exit through and along the bore of said tunnel, to said discovery so made as aforesaid, then you will find for the defendant.

Which instruction the court refused to give.

To which refusal of the court to give such instruction counsel for defendant then and there duly excepted.

The court instructs the jury as a matter of law, that there can be no location of a mining claim upon the public domain, until there has been a discovery of mineral thereon. The simple driving of a location stake, the marking of the claim, upon the ground, the survey making a location certificate and recording the same, is not sufficient. Until a vein in rock in place has been discovered, there is no valid discovery and no valid location can be made until such discovery. If the jury believe from the evidence in this case that the plaintiff or its grantors, had not made a discovery of mineral in its Little Mary and Ocean Wave lodes, prior to the location of the tunnel claimed by defendant, and you further believe from the evidence that the said tunnel, from the time of its location was being prosecuted with reasonable diligence, and that there was no failure to prosecute work on the tunnel for a period of six months, until after defendant was enjoined from working its said tunnel; that the

work on said tunnel was continuous, then and in such case you will find for the defendant.

Which instructions the court refused to give.

To which refusal of the court to give such instruction counsel for defendant then and there duly excepted.

If the jury believe from the evidence that there was no discovery of a vein of mineral in rock in place, made in the Little Mary and Ocean Wave lodes, or either of them, until after the location of the tunnel claimed by defendant, then and in such case it was not necessary, when application for patent for said Little Mary and Ocean Wave lodes, or either of them, was made for the owners of the tunnel, if such owners had not at that time reached the westerly side line of the Little Mary lode with the bore of its tunnel, to file an adverse claim in the United States Land Office and to commence a suit in support thereof to preserve the rights of such owners to the said tunnel.

Which instruction the court refused to give.

158 To which refusal of the court to give such instruction counsel for defendant then and there duly excepted.

If the jury believe from the evidence that defendant makes no claim to any vein, nor claims the right to follow or drive upon any vein, within the surface boundaries of the Little Mary and Ocean Wave lode- and mining claims, or either of them, and that the defendant is the owner of the Uinta tunnel mentioned and described in the pleadings, and that the mouth of said tunnel was and is located upon ground owned and in the lawful possession of defendant, then and in such case, under and by virtue of section one of chapter sixty-two of the Session Laws of the State of Colorado, for the year 1897, defendant has the right to drive and continue its tunnel through and across said Little Mary and Ocean Wave lode- and mining claims, and each thereof, and to use the bore of said tunnel only for entry and exit to remove ore and mineral from properties beyond said Little Mary and Ocean Wave lode- and mining claims that defendant might own.

Which instruction the court refused to give.

To which refusal of the court to give such instruction counsel for defendant then and there duly excepted.

Thereupon the court upon its own motion instructed the jury as follows:

Gentlemen of the jury, under the issues in this case, the plaintiff is entitled as a matter of law to recover possession of the property claimed in the complaint. Under the issues as they come before the court upon the trial, the court is obliged to exclude the testimony on the part of the defendant, and you are therefore instructed to return a verdict in favor of the plaintiff for possession of the premises described in the complaint.

To the giving of which instruction counsel for defendant then and there duly excepted.

Thereupon the following verdict was returned by the jury without retiring from the room:

We, the jury, in the above entitled cause, upon our oath do say: We find the issues herein joined in favor of the plaintiff, and that it is the owner and entitled to the possession of the premises in its complaint set forth and described.

ADOLPHUS FRED ROBERTS, *Foreman.*

To the rendition and reception of said verdict the defendant then and there, and at the time duly excepted.

159 Be it further remembered that afterwards and on the 31st day of January, 1902, the defendant, The Uinta Tunnel Mining and Transportation Company, filed its motion for a new trial herein, which said motion is in the words and figures following, to wit:

Now comes the above named defendant and moves the court for a new trial herein, for the following reasons, to wit:

1. Because the court erred in excluding evidence as to the location of the Uinta tunnel.

2. Because the court erred in excluding evidence as to the location and discovery of the Uinta Tunnel No. 23 lode.

3. Because the court erred in excluding evidence as to the location of the Uinta Tunnel No. 24 lode.

4. Because the court erred in excluding evidence as to location of the Uinta Tunnel No. 25 lode.

5. Because the court erred in excluding evidence as to the location of the Uinta Tunnel No. 26 lode.

6. Because the court erred in excluding evidence as to the location of the Uinta Tunnel No. 1 lode.

7. Because the court erred in excluding evidence in reference to the Black Jasper lode.

8. Because the court erred in excluding evidence in reference to the continuity of the work upon the Uinta tunnel, and in excluding evidence offered to prove that the Uinta tunnel had been prosecuted with diligence from the time of its location until the owners thereof were enjoined by the Federal court from further driving the bore of said tunnel.

9. Because the court erred in excluding evidence offered to show that the locators of the Uinta tunnel went upon the unappropriated and unoccupied public domain of the United States, in November, 1891, and started to work thereon, and that the survey of the said location was not made until the eighteenth day of February, 1892.

10. Because the court erred in excluding the evidence offered to prove that there was no discovery of ore or mineral in the discovery shaft of the Ocean Wave Lode mining claim, or within the surface boundaries of said claim, for more than a year after the date of the location certificate of the Uinta tunnel.

11. Because the court erred in excluding the evidence offered to prove that there was no discovery of ore or mineral in the
160 discovery shaft of the Little Mary Lode mining claim, or within the surface boundaries of said claim, for more than a

year after the date of the location certificate of the Uinta tunnel.

12. Because the court erred in refusing to permit the defendant to prove that there had been expended by the defendant its grantors more than the sum of sixty-five thousand dollars in machinery and work and labor in driving the bore of the Uinta tunnel, after the same had passed beyond the easterly side lines of the Ocean Wave and Little Mary Lode mining claims.

13. Because the court erred in not permitting the defendant to prove that the bore of the tunnel was driven through the Ocean Wave and Little Mary Lode mining claims by and with the consent and acquiescence of the officers and directors of the plaintiff.

14. Because the court erred in not permitting the defendant to prove that the present officers and owners of the plaintiff's properties purchased the control thereof for the purpose of annoying and harrassing the defendant and its grantor, and preventing the removal of ore that had been uncovered and discovered on the bore of the tunnel, a distance of more than eleven hundred feet from the easterly side line of said Little Mary and Ocean Wave Lode mining claims.

15. Because the court erred in rejecting the testimony that was offered by the defendant to prove the issues made by the pleadings in the case.

16. Because the court erred in receiving in evidence the location certificates of the Ocean Wave and Little Mary Lode mining claims over the objection of the defendant.

17. Because the court erred in receiving in evidence the patent issued upon the Ocean Wave and Little Mary Lode mining claims, offered in evidence by the plaintiff, over the objection of the defendant.

18. Because the court erred in receiving in evidence the amended location certificate of the Ocean Wave and Little Mary Lode mining claims, offered by the plaintiff, over the objection of the defendant.

19. Because the court erred in instructing the jury to return a verdict for the plaintiff.

20. Because the court erred in receiving the verdict of the jury, over the objection of the defendant.

161 21. Because the court erred in receiving the evidence offered on behalf of the plaintiff, and in rejecting the evidence offered on behalf of the defendant.

22. Because the court erred in the law, in this, by instructing the jury to find a verdict for the plaintiff.

23. Because the court erred in refusing to give to the jury instruction No. 1, asked by the defendant.

24. Because the court erred in refusing to give to the jury instruction No. 2, asked by the defendant.

25. Because the court erred in refusing to give to the jury instruction No. 3, asked by the defendant.

26. Because the court erred in refusing to give to the jury instruction No. 4, asked by the defendant.

27. Because the verdict of the jury should have been for the defendant and against the plaintiff.

"C. J. HUGHES, JR.,
SCOTT ASHTON,
Attorneys for Defendant.

Be it further remembered, that afterwards and on the 4th day of March, 1902, the above and foregoing motion came on for hearing and after argument thereon, the court having considered same and being well advised in the premises overruled said motion.

To which order and judgment of the court in overruling said motion the defendant then and there and at the time duly excepted.

Thereupon the court rendered a judgment on the verdict of the jury, which said judgment is in the words and figures following, to wit:

It is ordered by the court, for good and sufficient reason to the court appearing, that said motion be and the same is hereby overruled, and thereupon, on motion of the defendant, it is ordered by the court that the defendant have day and including thirty (30) days from this day within which time to file herein a bill of the exceptions reserved by it upon the trial of the issues herein joined, and cost bond on writ of error shall be in the sum of three hundred dollars ($300).

To the rendition of said judgment and to each and every part and portion thereof the defendant then and there and at the time duly excepted.

162 Thereupon the court gave the said defendant thirty (30) days in which to prepare and tender its bill of exceptions from this date, and find bond in the sum of three hundred dollars for appeal.

And inasmuch as the foregoing matters do not otherwise sufficiently appear of record, the defendant, The Uinta Tunnel Mining and Transportation Company, now here tenders this its bill of exceptions and prays that the same may be signed, sealed, and made a part of the record; which is done accordingly this 4th day of March, A. D. 1902.

JOHN A. RINER, *Judge.*

Approved:

H. H. LEE,
Counsel for Plaintiff.

Endorsed: No. 3658. United States of America, district of Colorado. In the circuit court. The Creede and Cripple Creek Mining and Milling Company *v.* The Uinta Tunnel Mining and Transportation Company. Bill of exceptions. Filed Mar. 4, 1902. Robert Bailey, clerk.

In the United States Circuit Court of Appeals for the Eighth Circuit.

THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY, Plaintiff in Error,
vs.
THE CREEDE AND CRIPPLE CREEK MINING AND MILLING COMPANY, Defendant in Error.

Assignment of Errors.

Now comes the plaintiff in error and alleges that there was manifest error in the ruling of the court on the pleadings, in the conduct and trial of said cause, in the judgment rendered therein, in the proceedings had in the taking of testimony therein, in the charging of the jury, and in refusing requests to instruct the jury, as will more fully appear in and by the record and transcript of said proceedings therein and in the entry of judgment, and which errors it hereby assigns as grounds for the reversal of said judgment and which are as follows, to wit:

1. The court erred in sustainmg the motion of the defendant in error (plaintiff below) to strike from the answer of the plaintiff in error (defendant below), that portion of said answer contained in the fourth paragraph thereof, as follows, to wit:

Which patent the defendant alleges was not obtained nor issued in pursuance of the statutes of the United States which provide for the issuance of patents, and that such patent is and should be
163 wholly null and void. It further alleges that said Ocean Wave and Little Mary Lode mining claims were not, nor were either of them, located upon any discovery vein or veins, and that no mineral vein whatever was ever discovered or uncovered in the discovery shaft of said Ocean Wave Lode mining claim or of said Little Mary Lode mining claim.

II. The court erred in sustaining the motion of the defendant in error (plaintiff below) to strike from the answer of the plaintiff in error (defendant below), that portion of said answer contained in the fifth paragraph thereof, as follows, to wit:

And denies that said patent relates back to or takes effect from the date of said alleged discovery and location for all purposes or for any purpose given or provided by the laws of the United States or of the State of Colorado concerning mining claims; but it alleges that there never was, at any time or by any person, any location whatever made of said pretended Ocean Wave Lode mining claim or of said Little Mary Lode mining claim.

III. The court erred in sustaining the motion of the defendant in error (plaintiff below) to strike from the answer of the plaintiff in error (defendant below) that portion of said answer contained in the sixth paragraph thereof, as follows, to wit:

But the defendant alleges that the plaintiff and its officers, and particularly its directors and those in the possession, control, and management of the workings of said alleged lode mining claims, for

more than a year last prior to the beginning of this action have had full knowledge that the defendant was driving its said tunnel into, through, and across said pretended Ocean Wave and Little Mary Lode mining claims, and that the same was so driven into, through, and across said alleged lode mining claims with the knowledge and consent of the plaintiff and of the persons who were in possession of, and who were working and developing said alleged lode mining claims. The defendant further denies that it wrongfully or unlawfully retains possession of any part or portion of either of said alleged lode mining claims.

IV. The court erred in sustaining the motion of the defendant in error (plaintiff below) to strike from the answer of the plaintiff in error (defendant below), all of the tenth paragraph thereof as follows, to wit:

Tenth. It alleges that said Uinta tunnel and tunnel site location was made by William E. Hall, W. R. Mason, and Herman Tieje, on the thirteenth day of January, 1892; that said Hall, Mason, and Tieje were, at the time of the location thereof, citi-
164 zens of the United States, and over the age of twenty-one years; that they entered upon the unoccupied public mineral domain of the United States and located said Uinta tunnel and tunnel site, by placing at the face thereof a plain sign or notice, containing the name of the Uinta tunnel the course and distance thereof, the date of the location, the general course thereof, and the name of said locators above named; that, in addition thereto, they placed at the face of said tunnel a written notice describing said Uinta tunnel by metes and bounds, and giving the course thereof; and that they afterwards marked the same upon the surface, and the same was designated upon the ground by a line run through the trees and underbrush upon said mountain, and by stakes set at intervals along said lines duly marked with the name of said tunnel site, so that the same could be easily designated upon the ground by a line run through the trees and underbrush upon said mountain, and by stakes set at intervals along said line duly marked with the name of said tunnel site, so that the same could be easily designated upon the ground and along the surface thereof.

V. The court erred in sustaining the motion of the defendant in error (plaintiff below) to strike from the answer of the plaintiff in error (defendant below) all of the eleventh paragraph thereof, as follows, to wit:

Eleventh. It alleges that said Uinta tunnel and tunnel site location was made under and in compliance with the provisions of section 2323 of the Revised Statutes of the United States, and the rules and regulations adopted by the Department of the Interior of the United States thereunder, and was located on the thirteenth day of January, 1892, as will appear from the location certificate thereof, which fully appears in and by the records of the county of El Paso, where the same is duly and at length recorded in Book 79, at page 492, of the records of said county, and that the defendant, by divers mesne conveyances, acquired said Uinta tunnel and tunnel site

location and all the rights, properties and possession thereunto ap, pertaining and belonging, on or about the sixteenth day of May-1896, and has ever since said time been the owner thereof, together with all the rights belonging thereto.

VI. The court erred in sustaining the motion of the defendant in error (plaintiff below) to strike from the answer of the plaintiff in error (defendant below) all of the twelfth paragraph thereof, as follows, to wit:

Twelfth. It alleges that prior to the acquisition by it of the title of said tunnel, work had been diligently prosecuted thereon
165 from the time of its location up to the time of the aforesaid purchase thereof by this defendant, and that the same was prosecuted in full compliance with the provisions of section 2323 of the Revised Statutes of the United States; that at no time was work abandoned, neglected or discontinued for any successive period of six months, but that the same was prosecuted with due diligence at all times prior to the purchase thereof by this defendant; that from the time of its said purchase the defendant has prosecuted the work therein and thereon with great diligence for the purpose of boring said tunnel, and also for the discovery of veins therein, and in the manner and to the extent provided for under section 2323 of the Revised Statutes of the United States, and that at no time since the defendant has been the owner thereof has work been discontinued for a period of six consecutive months.

VII. The court erred in sustaining the motion of the defendant in error (plaintiff below) to strike from the answer of the plaintiff in error (defendant below) all of paragraph thirteenth thereof, as follows, to wit:

Thirteenth. It alleges that it and its grantors have expended in and upon said tunnel the sum of more than one hundred and twenty-five thousand dollars ($125,000.00) and in addition to said expenditures have also expended upon surface work, in improvements and expenses, the further sum of not less than ten thousand dollars ($10,000.00).

VIII. The court erred in sustaining the motion of the defendant in error (plaintiff below) to strike from the answer of the plaintiff in error (defendant below) all of the fourteenth paragraph thereof as follows, to wit:

Fourteenth. It alleges that its work and the work of its said grantors in and upon said tunnel has been done openly and without concealment; that the same has been at all times prosecuted under the claim of the defendant and its grantors of the right so to do by virtue of the location of said tunnel and tunnel site location under and by virtue of the laws of the United States, and under the provisions of section 2323 of the Revised Statutes of the United States; and that the expenditures thereof and the developments made thereon have been made in compliance with the terms and provisions of and in reliance upon said statute.

IX. The court erred in sustaining the motion of the defendant in error (plaintiff below) to strike from the answer of the plaintiff in

error (defendant below) all of the fifteenth paragraph thereof, as follows, to wit:

Fifteenth. It alleges that said Uinta tunnel entered the westerly side lines of the pretended Little Mary Lode mining claim at
166 a point distant from the mouth or portal of said tunnel about 550 feet more than one year prior to the commencement of the above entitled action; that said tunnel was driven through said pretended Little Mary Lode mining claim with great diligence, and was driven on its course (throu*th*) the side lines of said pretended Ocean Wave Lode mining claim, and when said tunnel had been driven through said pretended Ocean Wave and Little Mary Lode mining claims, it was distant from the mouth or portal thereof about 1175 feet; that in running said tunnel through said pretended Ocean Wave and Little Mary lode- and lode mining claims, the defendant drove the same a distance of about six hundred and twenty-five feet; that the same was driven through said pretended Ocean Wave and Little Mary Lode mining claims with the full knowledge and consent of the plaintiff at the great cost and expense, as above set forth; that said tunnel was so driven through said pretended lode mining claims more than a year prior to the commencement of the above entitled action, without any protest or objection made by the plaintiff or its officers, employees, or agents, but that the driving of said tunnel was acquiesced in by the plaintiff, its officers, servants, and employees; and that after driving said tunnel through and across said pretended Ocean Wave and Little Mary Lode mining claims, the defendant continued the prosecution of its said tunnel and drove the same to a distance of about twenty-two hundred feet and until it reached and penetrated the territory that is claimed by the Portland Gold Mining Company and it was after said tunnel had reached said distance that the plaintiff instituted the above entitled action, and the same was then instituted by the plaintiff because, for the reason and on account of the matters and things hereinafter recited and set forth.

X. The court erred in sustaining the motion of the defendant in error (plaintiff below) to strike from the answer of the plaintiff in error (defendant below) all of the sixteenth paragraph thereof, as follows, to wit:

Sixteenth. Further answering, it alleges that at a point distant from the mouth or portal of said tunnel, and in and upon the line thereof about nineteen hundred and thirty-one feet, and upon the ground embraced within the surface boundaries of the location of said tunnel, and within the location of the bore thereof, which location of said tunnel was made long prior to any location upon said territory by any other person or persons, the defendant, in driving its said tunnel, discovered, uncovered, and disclosed a vein and lode in rock in place, bearing gold, silver, and other precious metals, which said vein entered said tunnel and was parallel to the line of said tunnel for a distance of more than five hundred
167 feet, and is still within said tunnel and within the breast thereof; that the same is now on the line and bore thereof

near the south line of said tunnel that said tunnel is at present driven into the mountain for a distance slightly exceeding twenty-two hundred feet, and is through and beyond the easterly side line of said pretended Ocean Wave Lode mining claim about eleven hundred feet; that said vein is intersected, uncovered, and discovered in said tunnel as above set forth, and is described as the Uinta Tunnel No. 23 lode, and is a cross lode to any lode ever uncovered and discovered in said territory by any person or persons; and that the same was never uncovered or discovered by any person or persons until the same was discovered and cut as aforesaid by said Uinta tunnel.

XI. The court erred in sustaining the motion of the defendant in error (plaintiff below) to strike from the answer of the plaintiff in error (defendant below) all of the seventeenth paragraph thereof as follows, to wit:

Seventeenth. It alleges that, in driving said tunnel, it has followed said cross lode by it discovered as aforesaid upon territory which was segregated and marked, and upon ground appropriated by said tunnel location parallel in location thereto, as it had full right and authority to do in virtue and by right of section 2336 Revised Statutes of the United States; that it located said cross lode by calling it Uinta Tunnel No. 23 lode and mining claim, and by placing at the mouth of said tunnel in a conspicuous place a location certificate showing the general course of said lode and the number of feet claimed on each side of the discovery thereof, together with a description thereof showing the date of discovery, the date of location, the number of feet claimed as aforesaid, and the name of the locator thereof, to wit, the Uinta Tunnel Mining and Transportation Company; that it afterwards caused a location certificate thereof to be filed in the office of the clerk and recorder of El Paso county, Colorado, in Book 278, at page — records of said clerk and recorder, and claimed by the location thereof from point of discovery thereof running twelve hundred feet southerly and three hundred feet northerly; that said cross lode is at the present time disclosed and uncovered and appears in the breast of said tunnel running almost parallel with the course of said tunnel; that under and by virtue of the Revised Statutes of the United States hereinabove referred to, and in, under, and by virtue of the terms of section 2336 thereof this defendant has the right to own, possess, and enjoy said cross lode so by it uncovered and discovered as aforesaid, and to mine, extract, remove, and sell the ores there-
168 from, and that said vein so uncovered and disclosed as aforesaid and now appearing at the breast of said tunnel is a well-defined gold and silver bearing lode or vein in rock in place, between the walls of rock and is valuable for mining and for the minerals therein contained; that said cross lode by it discovered as aforesaid was never uncovered, disclosed, or discovered by the plaintiff in any workings upon said pretended Ocean Wave and Little Mary Lode mining claims, whether done by said plaintiff or any other person or persons whomsoever; that the defendant has

claimed and still claims the right to own, possess, and operate said lode as of the date, or by virtue of said location of said Uinta tunnel, to wit, of the thirteenth day of January, A. D. 1892, as was set forth and claimed in and by virtue of said location certificate thereof hereinbefore described, and by virtue of said notice posted at the mouth of said Uinta tunnel, as hereinbefore alleged; that said vein so uncovered and disclosed as aforesaid, does not outcrop or appear at the surface, nor was the same known to exist at the time of the location of said Uinta tunnel, or until the same was discovered by this defendant, as it was discovered by it on or about the eighteenth day of December, A. D. 1897, that the defendant under and by virtue of said discovery has the right to mine, extract, and sell the ores and minerals therefrom, and has the right to mine, extract, and sell ores and minerals from said vein over, through, and along said tunnel as said tunnel entered along and across said pretended Ocean Wave and Little Mary Lode mining claims; that the defendant claims the right to use the bore of said tunnel by reason of the facts aforesaid as it penetrates said Little Mary lode and lode mining claim, and across the same as hereinabove stated, and as said tunnel likewise penetrates through and across said pretended Ocean Wave lode and lode mining claim, as hereinabove stated; that the plaintiff, by permitting and allowing this defendant to expend more than the sum of one hundred and thirty-five thousand dollars ($135,000.00) as aforesaid in reaching uncovering, and discovering said ore body, has no right to interfere with this defendant in operating its tunnel over, through, and along said pretended Ocean Wave and Little Mary lode- and lode mining claims; but, on the contrary, the plaintiff by its conduct and actions in the premises, as hereinbefore recited and set forth, has permitted and allowed this defendant to expend said large sums of money and has permitted and allowed it so to proceed with said tunnel through and across said pretended Ocean Wave and Little Mary lode- and lode mining claims, until the same has ripened into such a license and permission to so cross said pretended Ocean Wave and Little Mary lode and lode mining claims that the defendant can not now be disturbed in its use of said tunnel.

169 XII. The court erred in sustaining the motion of the defendant in error (plaintiff below) to strike from the answer of the plaintiff in error (defendant below) all of the eighteenth paragraph thereof, as follows, to wit:

Eighteenth. It alleges that, at a point distant from the mouth or portal of said tunnel, and in and upon the line thereof two thousand one hundred and two feet, upon the ground embraced within the surface boundaries of the location of said Uinta Tunnel location and within the bore thereof, which location of said tunnel was made long prior to any location upon said territory by any other person or persons whatever, that in driving said tunnel this defendant discovered, uncovered and disclosed a vein and lode, in rock in place, which carried gold, silver, and other precious metals on the twenty-third day of December A. D. 1897, which said vein was cut, crossed,

intersected, and penetrated by said tunnel, and said vein so discovered as aforesaid had been segregated from the public domain of the United States, and located and appropriated by said Uinta tunnel and tunnel site, and is upon ground that was appropriated by said Uinta Tunnel location long prior to any other location or attempted or pretended location thereof; that this defendant located said vein by calling the same Uinta Tunnel No. 24 lode, and placed and erected at the mouth of said tunnel in a conspicuous place a location certificate or notice thereof, setting forth and showing the general course of said lode, the number of feet claimed on each side of said discovery thereof, together with a description thereof showing the date of discovery, the date of location, the number of feet claimed as aforesaid, and the name of the locator thereof, to wit, the Uinta Tunnel Mining and Transportation Company; that it afterwards caused the location certificate thereof to be filed in the office of the clerk and recorder of El Paso county, Colorado, in Book 278, at page — among the records in the office of said clerk and recorder, and claimed by the location thereof from the point of discovery thereof running northerly seven hundred and fifty feet and southerly seven hundred and fifty feet; that said discovery of said Uinta Tunnel No. 24 lode was made on the twenty-third day of December, A. D. 1897, in full conformity with the laws of the United States and of the State of Colorado, in reference to such locations; that a location certificate thereof was made in duplicate, one of which certificates was posted in a conspicuous place near the mouth of said tunnel, and the other recorded in the office of the clerk and recorder of El Paso county, Colorado, as aforesaid, on the second day of March, A. D. 1898; that said Uinta Tunnel No. 24
170 lode and the vein therein discovered as aforesaid does not outcrop, apex, or appear on the surface of the ground at any point whatever; and that this defendant has claimed and has the right to own possess, operate, and enjoy said lode, as of the date and by virtue of the location of said Uinta Tunnel No. 24 lode, to wit, on the thirteenth day of January, A. D. 1892, and so sets forth and claims in and by virtue of said location certificate thereof hereinbefore described, and by virtue of said notice posted at the mouth of said Uinta Tunnel No. 24 lode, as hereinbefore alleged; that under and by virtue of said discovery it has the right to mine, extract, and sell the ores and minerals therefrom, and has the right to mine, extract, and sell the ores and mineral from said vein, and has the right to remove said ores and minerals by it mined and extracted through and along said tunnel where said tunnel enters said pretended Little Mary lode and lode mining claim, and across said pretended Little Mary lode and lode mining claim, as well as across and along said pretended Ocean Wave lode and lode mining claim; that the defendant claims the right to use the bore of said tunnel through and across said pretended Ocean Wave and Little Mary Lode mining claims by reason of the facts aforesaid, and that the plaintiff, by permitting and allowing this defendant to expend more than the sum of one hundred and thirty-five thousand dollars ($135,000.00) as

aforesaid in reaching, uncovering, and discovering said ore body, has no right to interfere with the defendant in operating its tunnel over, through, and along said pretended Ocean Wave and Little Mary lode- and lode mining claims; but that, on the contrary, the plaintiff by its conduct and actions in the premises as hereinabove recited and set forth, has permitted and allowed the defendant to expend said sum of one hundred and thirty-five thousand dollars ($135,000.00), and has permitted and allowed the defendant to so proceed with said tunnel through and across said pretended Ocean Wave and Little Mary lode- and lode mining claims until the same has ripened into such a license and permission as entitles the defendant to use its said tunnel as it penetrates said pretended Ocean Wave and Little Mary lode- and lode mining claim-, and that said license and permission is such that the defendant can not be disturbed therein.

XIII. The court erred in sustaining the motion of the defendant in error (plaintiff below) to strike from the answer of the plaintiff in error (defendant below) all of the nineteenth paragraph thereof, as follows, to wit:

Nineteenth. It alleges that at a point in said tunnel from the mouth or portal thereof about two thousand one hundred and eighteen feet upon ground embraced within the surface boundaries of said Uinta tunnel and within the bore thereof, which
171 location of said tunnel was prior to any other location made on said territory aforesaid, the defendant, in driving and prosecuting said tunnel, uncovered and discovered on the sixth day of January, A. D. 1899, a well defined lode or vein in rock in place, which carried gold, silver, and other precious metals, which said vein was cut, crossed, intersected, and penetrated by said tunnel; that said vein so discovered as aforesaid has been segregated from the public domain of the United States, and located and appropriated by the Uinta Tunnel location long prior to any location or attempted or pretended location thereof; that this defendant located said vein by calling the same Uinta Tunnel No. 25 lode, and placed and erected at the mouth of said tunnel in a conspicuous place, a location certificate or notice thereof setting forth and showing the general course of said lode, the number of feet claimed on each side of said discovery thereof, together with a description thereof, showing the date of discovery, the date of location, the number of feet claimed as aforesaid, and the name of the locator, to wit, the Uinta Tunnel Mining and Transportation Company; that it afterwards caused a location certificate thereof to be filed in the office of the clerk and recorder of El Paso county, Colorado, in Book 278, at page — among the records in the office of said clerk and recorder, and claimed by the location thereof from the point of discovery thereof, running seven hundred and fifty feet in a northerly direction and seven hundred and fifty feet in a southerly direction; that said discovery of said Uinta Tunnel No. 25 lode was had and made on the sixth day of January, A. D. 1897, in full conformity with the laws of the United States, and of the State of Colorado, in reference

to such locations; that a location certificate thereof was made in duplicate, one of which certificates was posted in a conspicuous place at the mouth of said tunnel as aforesaid, and the other thereof recorded in the office of the clerk and recorder of El Paso county, Colorado, as aforesaid, on the second day of March, A. D. 1898; that said Uinta Tunnel No. 25 lode and vein thereof as aforesaid, does not outcrop, apex, or appear at the surface, or at any other point whatever; that under and by virtue of said discovery, this defendant has the right to mine, extract, remove, and sell the ores and minerals therefrom; that said vein was uncovered and discovered as aforesaid and known as and called Uinta Tunnel No. 25 lode, is a well defined vein between two walls, in rock in place, and carries gold, silver, and other precious metals; that said lode was never uncovered or discovered by the plaintiff or any other person or persons whomsoever; and that this defendant has claimed and has the right to own, possess, operate, and enjoy said lode as of the date by virtue of the location of said Uinta tunnel, to wit, the thirteenth day
172 of January, A. D. 1892, and so sets forth and claims in and by virtue of said location certificate thereof, hereinbefore described, and by virtue of said notice posted at the mouth of said Uinta tunnel as hereinbefore alleged; that it has the right to remove said ores and minerals, by it mined and extracted from said Uinta Tunnel No. 25 lode, through and along said tunnel where said tunnel enters said pretended Little Mary lode and lode mining claim, and across said pretended Little Mary lode and lode mining claim, as well as along and across said pretended Ocean Wave lode and lode mining claim; that it claims the right to use the bore of said tunnel, through and across said pretended Ocean Wave and Little Mary lode and lode mining claims, by reason of the facts aforesaid; that the plaintiff, by permitting and allowing this defendant to expend more than the sum of one hundred and thirty-five thousand dollars ($135,000) as aforesaid in reaching, uncovering, and discovering said ore body, has no right to interfere with this defendant in operating its tunnel, over, through, and along said pretended Ocean Wave and Little Mary lode and lode mining claims, but on the contrary the plaintiff by its conduct and actions in the premises hereinabove recited and set forth, has permitted and allowed the defendant to expend the sum of more than one hundred and thirty-five thousand dollars ($135,000) and has permitted and allowed the defendant to so proceed with said tunnel, through, and across said pretended Ocean Wave and Little Mary Lode mining claims, until the same has ripened into such a license and permission as entitles the defendant to use its said tunnel as it penetrates said pretended Ocean Wave and Little Mary lode and lode mining claims; and that said license and permission is such that the defendant can not be disturbed therein.

XIV. The court erred in sustaining the motion of the defendant in error (plaintiff below) to strike from the answer of the plaintiff in error (defendant below) all of the twentieth paragraph thereof, as follows, to wit:

Twentieth. It alleges that, at a point in said tunnel distant from the mouth or portal about two thousand one hundred and eighty feet, upon ground embraced within the surface boundaries of said tunnel, and within the bore thereof, which location of said tunnel was prior to any other location made on said territory, this defendant in driving and prosecuting its said tunnel, uncovered, and discovered, on the fifteenth day of December, A. D. 1897, a well defined lode or vein in rock in place, which carries gold, silver, and other precious metals which said vein was cut, crossed, intersected, and penetrated by said tunnel; that said vein so discovered as aforesaid had been segregated from the public domain of the United States,
173 and located and appropriated by said location of said Uinta tunnel and tunnel site, and is upon ground that was appropriated by said Uinta Tunnel location long prior to any other location or attempted or pretended location thereof; that this defendant located said vein by calling the same Uinta Tunnel No. 26 Lode, and placed and erected at the mouth of said tunnel, in a conspicuous place, a location certificate or notice thereof setting forth and showing the general course of said lode, the number of feet claimed on each side of said discovery thereof, together with a description thereof showing the date of discovery, the date of location, the number of feet claimed as aforesaid, and the name of the locator to wit, the Uinta Tunnel Mining and Transportation Company; that it afterwards caused the location certificate thereof to be filed in the office of the clerk and recorder of El Paso county, Colorado, in Book 278, at page — among the records in the office of said clerk and recorder; that it claimed by the location thereof and upon the discovery thereof one thousand feet running in a northerly direction and five hundred feet in a southerly direction from the point of discovery thereof; that said discovery of said Uinta Tunnel No. 26 lode was had and made on the fifteenth day of December, A. D. 1897, in full conformity with the laws of the United States and of the State of Colorado, in reference to such locations; that a location certificate thereof was made in duplicate, one of which certificates was posted in a conspicuous place at the mouth of said tunnel as aforesaid, and the other thereof recorded in the office of the clerk and recorder of El Paso county, Colorado, as aforesaid, on the second day of March, A. D. 1898; that said Uinta Tunnel No. 26 lode does not outcrop, apex, or appear at the surface of the ground at any point whatever; that said vein uncovered and discovered as aforesaid, and known as and called Uinta Tunnel No. 26 lode, is a well defined vein between two walls of rock in place and carries gold, silver, and other precious metals; that said lode was never uncovered or discovered by the plaintiff or any other person or persons whomsoever; that this defendant further claims that it has the right to own, possess, operate, and enjoy said lode as of the date and by virtue of the location of said tunnel, to wit, on the thirteenth day of January, A. D. 1892; that by virtue of said location certificate thereof hereinbefore described and by virtue of said notice posted at the mouth of said tunnel as hereinbefore alleged, it has the right to remove said ores and miner-

als, by it mined and extracted from said Uinta Tunnel No. 26 lode, through and along said tunnel where said tunnel enters said pretended Little Mary lode and lode mining claim and across said Little Mary lode and lode mining claim, as well as along and
174 across said pretended Ocean Wave lode and lode mining claim; that this defendant claims the right to use the bore of said tunnel, through and across said pretended Little Mary and Ocean Wave lode- and lode mining claim- by reason of the facts aforesaid; that the plaintiff, by permitting and allowing this defendant to expend more than the sum of one hundred and thirty-five thousand dollars ($135,000.00) as aforesaid, in reaching, uncovering, and discovering said ore body, has no right to interfere with this defendant in crossing over, through, and along said pretended Ocean Wave and Little Mary lode- and lode mining claims; but on the contrary the plaintiff by its conduct and actions in the premises as hereinbefore set forth, has permitted and allowed the defendant to expend said large sum of money and has permitted and allowed the defendant to so proceed with its said tunnel through and across said pretended Ocean Wave and Little Mary lodes and lode mining claims, until the same has ripened into a license and permission such as entitled the defendant to use its said tunnel as it penetrated said pretended Ocean Wave and Little Mary lodes and lode mining claims; and that said license and permission is such that the defendant cannot be disturbed therein.

XV. The court erred in sustaining the motion of the defendant in error (plaintiff below) to strike from the answer of the plaintiff in error (defendant below) all of the twenty-first paragraph thereof, as follows, to wit:

"Twenty-first. It further avers that the patent of the United States issued for said Ocean Wave and Little Mary lodes and lode mining claims was issued subject to the act of Congress in reference to tunnel rights and subject to the laws of the State of Colorado in reference to the right to run tunnels through grounds that may be patented, for the purpose of reaching territory that belonged to tunnel owners beyond such patented claims, and subject to the rights which the defendant The Uinta Tunnel Mining and Transportation Company and its grantors, had acquired by reason of the location of said Uinta tunnel, and in and to any and all lodes, veins, and mining claims that it might cut or discover in driving said tunnel as is guaranteed to the locator of said tunnel under and by virtue of section 2323 of the Revised Statutes of the United States; that the pretended discovery alleged and pretended to have been made in and upon said pretended Ocean Wave and Little Mary lodes and lode mining claims, and by virtue of which the plaintiffs claim the right to patent the same under the laws of the United States, was not made until long after the location of the said Uinta tunnel, and at the time said pretended locations were made said locators thereof were advised and knew that said tunnel had been located and had been
175 and was being prosecuted with due diligence and in strict compliance with the terms and conditions of the statutes of

the United States, and of the State of Colorado, which authorize and provide for the location and prosecution of such tunnels and which defines and determines the rights pertaining thereto; and that said pretended Ocean Wave and Little Mary Lode mining claims, so far as the same may be now claimed and possessed by said plaintiff, were taken and are held subject to the rights of this defendant as owner of said Uinta tunnel, located in accordance with section 2323 of the Revised Statutes of the United States, and also subject to the rights of this defendant to cross said claims, and to drive drifts therein, and to follow said lode claims as located by this defendant and to reach lode claims so owned by this defendant as hereinbefore and hereinafter stated.

XVI. The court erred in sustaining the motion of the defendant in error (plaintiff below) to strike from the answer of the plaintiff in error (defendant below) all of the twenty-second paragraph thereof, as follows, to wit:

Twenty-second. It avers that, from about twenty-two hundred and fifty feet from the mouth or portal of said Uinta tunnel, said tunnel run along, through, and across the Black Jasper lode; that on the thirteenth day of January, A. D. 1897, Vance Carothers, who was then and there a citizen of the United States over the age of twenty-one years, entered upon the unoccupied public mineral domain of the United States, and located what is known as said Black Jasper Lode mining claim; that the same was marked by six substantial posts, one at each corner and one at the center of each side line thereof, which posts were hewed and marked on the sides in towards the claim; that a discovery shaft was sunk thereon to a depth of more than ten feet from the lowest point of the rim thereof at the surface, which disclosed a well defined vein which carried gold and other precious metals therein; that at the point of said discovery the locator placed a plain sign or notice containing the name of the lode, the date of the discovery, the name of the locator, and the general course thereof; that afterwards on the second day of February, A. D. 1897, said Vance Carothers caused a location certificate to be made of said Black Jasper lode, which contained the name of the lode, the name of the locator, the date of the location, and described the same by metes and bounds; that said location certificate was afterwards on the second day of February, A. D. 1897, duly recorded in the office of the clerk and recorder of El Paso county, Colorado; that this defendant, by mesne conveyances from the locator and owner of said Black Jasper Lode mining claim, became the
176 owner thereof and is now such owner; that said tunnel enters said Black Jasper lode as aforesaid at about twenty-two hundred and fifty feet from the mouth or portal thereof, and continues along and through said Black Jasper lode as located to the breast thereof; that this defendant has the right, under the laws of the State of Colorado and the acts of Congress, to enter through and along said Ocean Wave and Little Mary lodes and lode mining claims for the purpose of reaching the lode claims owned by this defendant beyond the mouth or portal of said tunnel, and beyond said

Ocean Wave and Little Mary lodes and lode mining claims; that said Ocean Wave and Little Mary lodes and lode mining claims lie between the mouth or portal of said tunnel and said Black Jasper Lode mining claim, and between said Uinta Tunnel No. 23 lode, and mining claim, and said Uinta Tunnel No. 24 lode and mining claim, and said Uinta Tunnel No. 25 lode and mining claim and said Uinta Tunnel No. 26 lode and mining claim, from which said last lode and mining claim this defendant has been shipping rich and valuable ore; that by reason of the ownership of said lode and mining claims last above described and by virtue of the laws of the State of Colorado, and the acts of Congress, this defendant has the right to cross through and beyond said Ocean Wave and Little Mary lodes and lode mining claims for the purpose of reaching said lode mining claims which are owned by and which belong to this defendant, of said answer.

XVII. The court erred in charging the jury over and against the objection and exception of the plaintiff in error, as follows:

GENTLEMEN OF THE JURY: Under the issues in this case, the plaintiff is entitled, as a matter of law, to recover possession of the property claimed in the complaint. Under the issues as they come before the court, upon the trial, the court is obliged to exclude the testimony on the part of the defendant, and you are therefore instructed to return a verdict in favor of the plaintiff for possession of the premises described in the complaint.

XVIII. The court erred in refusing to instruct the jury, on the request of the plaintiff in error (defendant below) as follows:

If the jury believe from the evidence that defendant, for more than a year prior to the time of instituting this action, was extending its tunnel through and beyond the property claimed by plaintiff, and that in so doing the defendant expended large sums of money for machinery and labor, and that all thereof was done with the full knowledge of plaintiff, and without any objection
177 from or protest on the part of plaintiff, until long after defendant had driven the bore of its tunnel a distance of about twenty-two hundred feet, when defendant discovered and uncovered a vein of ore in mineral on the line of its tunnel not previously known to exist, and had commenced to mine, extract, ship and sell rich and valuable ore and mineral therefrom, making no other or further claim to the Little Mary or Ocean Wave Lode and mining claim, except the right of entry and exit through and along the bore of said tunnel, to said discovery so made as aforesaid, then you will find for the defendant.

XIX. The court erred in refusing to instruct the jury, on the request of the plaintiff in error (defendant below) as follows:

The court instructs the jury, as a matter of law, that there can be no location of a mining claim upon the public domain, until there has been a discovery of minerals thereon. The simple driving of a location stake, the marking of the claim upon the ground, the survey, making a location certificate and recording the same, is not sufficient. Until a vein in rock in place has been discovered

there is no valid discovery and no valid location can be made until such discovery. If the jury believe from the evidence in this case that the plaintiff or its grantors, had not made a discovery of mineral in its Little Mary and Ocean Wave lodes, prior to the location of the tunnel claimed by defendant, and you further believe from the evidence that the said tunnel from the time of its location, was being prosecuted with reasonable diligence and that there was no failure to prosecute work on the tunnel for a period of six months, until after defendant was enjoined from working its said tunnel, that the work on said tunnel was continuous, then and in such case you will find for the defendant.

XX. The court erred in refusing to instruct the jury, on the request of the plaintiff in error (defendant below) as follows:

If the jury believe from the evidence that there was no discovery of a vein of mineral in rock in place, made in the Little Mary and Ocean Wave lodes, or either of them, until after the location of the tunnel claimed by defendant, then and in such case it was not necessary, when application for patent for said Little Mary and Ocean Wave lodes or either of them was made, for the owners of the tunnel, if such owners had not at that time reached the westerly side line of the Little Mary lode with the bore of its tunnel
178 to file an adverse claim in the United States Land Office and to commence a suit in support thereof to preserve the rights of such owners to the said tunnel.

XXI. The court erred in refusing to instruct the jury on the request of the plaintiff in error (defendant below) as follows:

If the jury believe from the evidence that defendant makes no claim to any vein, nor claims the right to follow or drive upon any vein, within the surface boundaries of the Little Mary and Ocean Wave lode and mining claims or either of them, and that the defendant is the owner of the Uinta tunnel mentioned and described in the pleadings, and that the mouth of said tunnel was and is located upon ground owned and in the lawful possession of defendant, then and in such case, under and by virtue of section one of chapter sixty-two of the Session Laws of the State of Colorado for the year, 1897, defendant has the right to drive and continue its tunnel through and across said Little Mary and Ocean Wave lode and mining claims, and each thereof, and to use the bore of said tunnel only for entry and exit to remove ore and mineral from properties beyond said Little Mary and Ocean Wave lode and mining claims that defendant might own.

XXII. The court erred in admitting in evidence over and against the objection and exception of the plaintiff in error, defendant in error's Exhibit No. 1, being a certified copy of the location certificate of the Ocean Wave lode mining claim.

XXIII. The court erred in admitting in evidence over and against the objection and exception of the plaintiff in error, defendant in error's Exhibit 2, being a certified copy of the location certificate of the Little Mary lode mining claim.

XXIV. The court erred in admitting in evidence, over and against the objection and exception of the plaintiff in error, defendant in error's Exhibit No. 3, being a certified copy of a mining deed dated March 4, A. D. 1892, from J. B. Winchell and E. W. McNeal to John N. Bartels.

XXV. The court erred in admitting in evidence over and against the objection and exception of the plaintiff in error, defendant in error's Exhibit No. 4, being a certified copy of a mining deed dated March 10, A. D. 1892, from J. B. Winchell and E. W. McNeal to Geo. M. Carter.

XXVI. The court erred in admitting in evidence, over and against the objection and exception of the plaintiff in error, defendant in error's Exhibit No. 5, being a certified copy of a mining deed dated February 13, A. D. 1892, from J. B. Winchell and E. W. McNeal to J. T. Estill.

179 XXVII. The court erred in admitting in evidence, over and against the objection and exception of the plaintiff in error, defendant in error's Exhibit No. 6, being a certified copy of a mining deed dated February 10, A. D. 1892, from J. B. Winchell and E. W. McNeal to H. C. Shimp and H. E. Bassett.

XXVIII. The court erred in admitting in evidence over and against the objection and exception of the plaintiff in error, defendant in error's Exhibit No. 7, being a certified copy of a mining deed dated February 1, A. D. 1892, from J. B. Winchell and E. W. McNeal to H. M. Fitzhugh.

XXIX. The court erred in admitting in evidence over and against the objection and exception of the plaintiff in error defendant in error's Exhibit No. 8 being a certified copy of a mining deed dated February 8, A. D. 1892, from J. B. Winchell and E. W. McNeal to C. E. Hudson.

XXX. The court erred in admitting in evidence over and against the objection and exception of the plaintiff in error, defendant in error's Exhibit No. 9, being a certified copy of a mining deed dated February 8, A. D. 1892, from J. B. Winchell and E. W. McNeal to C. E. Hudson.

XXXI. The court erred in admitting in evidence, over and against the objection and exception of the plaintiff in error, defendant in error's Exhibit No. 10, being a mining deed dated March 23, A. D. 1892, from H. E. Bassett, D. P. Sill, J. B. Winchell, E. W. McNeal, C. V. Potts, H. T. Cooper, J. T. Estill, G. M. Carter, H. M. Fitzhugh, and H. C. Shimp to the Creede and Cripple Creek Mining and Milling Company.

XXXII. The court erred in admitting in evidence over and against the objection and exception of the plaintiff in error defendant in error's Exhibit No. 11, being a mining deed dated May 25, A. D. 1892, from J. N. Bartels to the Creede and Cripple Creek Mining and Milling Company.

XXXIII. The court erred in admitting in evidence, over and against the objection and exception of the plaintiff in error, defendant in error's Exhibit No. 12, being a mining deed dated April

8, A. D. 1892, from C. E. Hudson to the Creede and Cripple Creek Mining and Milling Company.

XXXIV. The court erred in admitting in evidence over and against the objection and exception of the plaintiff in error, defendant in error's Exhibit No. 13, being a certified copy of an amended location certificate of the Ocean Wave Lode mining claim.

180 XXXV. The court erred in admitting in evidence over and against the objection and exception of the plaintiff in error, defendant in error's Exhibit No. 14, being a certified copy of an amended location certificate of the Little Mary Lode mining claim.

XXXVI. The court erred in admitting in evidence over and against the objection and exception of the plaintiff in error, defendant in error's Exhibit No. 15, being the patent of the United States of America to the Creede and Cripple Creek Mining and Milling Company for the Ocean Wave and Little Mary Lode mining claims, survey No. 8192.

XXXVII. The court erred in refusing to permit the plaintiff in error (defendant below) to prove by L. W. Davis as a witness, the location of the discovery on the Uinta Tunnel No. 23 lode.

XXXVIII. The court erred in refusing to permit the plaintiff in error (defendant below) to prove by L. W. Davis as a witness how the discovery of the Uinta Tunnel No. 23 lode was made.

XXXIX. The court erred in refusing to permit the plaintiff in error (defendant below) to prove by L. W. Davis as a witness that there was uncovered and discovered in the bore of the tunnel at a point about 750 feet east of the easterly side line of the Ocean Wave lode, a vein of mineral in rock in place carrying rich and valuable ores; that that vein was continuous with the bore of the tunnel for a distance of 600 feet; that the discovery of the vein was between two well defined walls and in place; that the ore and mineral therein uncovered and discovered was a blind lode and vein and of great value carrying gold; that the same had not before that time been discovered by any other person or parties at the surface; that it was upon ground belonging to and within the surface boundaries of the Uinta tunnel and had not been appropriated by any other person or parties prior to the location of the tunnel; that after the discovery thereof there was a proper location made of said lode by the defendant by staking the same and posting at the portal of the tunnel a proper notice and thereafter making and recording a location certificate thereof.

XL. The court erred in refusing to permit the plaintiff in error (defendant below) to prove by L. W. Davis as a witness, the location of the discovery in the Uinta Tunnel No. 24 lode.

XLI. The court erred in refusing to permit the plaintiff in error (defendant below) to prove by L. W. Davis as a witness, that there was uncovered and discovered in the bore of the tunnel

181 at a point about 955 feet east of the easterly side line of the Ocean Wave lode a vein of mineral in rock in place carrying

rich and valuable ores; that the discovery of the vein was between two well defined walls and in place; that the ore and mineral therein uncovered and discovered was a blind lode and vein and of great value, carrying gold; that the same had not before that time been discovered by any other person or parties at the surface; that it was upon ground belonging to and within the surface boundaries of the Uinta tunnel and had not been appropriated by any other person or parties prior to the location of the tunnel; that after the discovery thereof there was a proper location made of said lode by the defendant by staking the same and posting at the portal of the tunnel a proper notice and thereafter making and recording a location certificate thereof.

XLII. The court erred in refusing to permit the plaintiff in error (defendant below) to prove by L. W. Davis as a witness, the location of the discovery in the Uinta Tunnel No. 25 lode.

XLIII. The court erred in refusing to permit the plaintiff in error (defendant below) to prove by L. W. Davis as a witness that there was uncovered and discovered in the bore of the tunnel at a point about 971 feet east of the easterly side line of the Ocean Wave lode a vein of mineral in rock in place carrying rich and valuable ores; that the discovery of the vein was between two well defined walls and in place; that the ore and mineral therein uncovered and discovered was a blind lode and vein and of great value, carrying gold; that the same had not before that time been discovered by any other person or parties at the surface; that it was upon ground belonging to and within the surface boundaries of the Uinta tunnel and had not been appropriated by any other person or parties prior to the location of the tunnel; that after the discovery thereof there was a proper location made of said lode by the defendant, by staking the same, posting at the portal of the tunnel a proper notice, and thereafter making and recording a location certificate thereof.

XLIV. The court erred in refusing to permit the plaintiff in error (defendant below) to prove by L. W. Davis as a witness, the location of the discovery in the Uinta Tunnel No. 26 lode.

XLV. The court erred in refusing to permit the plaintiff in error (defendant below) to prove, by L. W. Davis as a witness, that there was uncovered and discovered in the bore of the tunnel, at a point about 1034 feet east of the easterly side line of the Ocean Wave lode, a vein of mineral or rock in place carrying rich and valuable
182 ores; that the discovery of the vein was between two well defined walls and in place; that the ore and mineral therein uncovered and discovered was a blind lode and vein of great value, carrying gold; that the same had not before that time been discovered by any other person or parties at the surface; that it was upon ground belonging to and within the surface boundaries of the Uinta tunnel and had not been appropriated by any other person or parties prior to the location of the tunnel. That after the discovery thereof there was a proper location made of said lode by the defendant by staking the same and posting at the portal of the tunnel a

proper notice and thereafter making and recording a location certificate thereof.

XLVI. The court erred in refusing to permit the plaintiff in error (defendant below) to introduce in evidence its Exhibit "B" being a certified copy of the location certificate of the Uinta Tunnel No. 23 lode.

XLVII. The court erred in refusing to permit the plaintiff in error (defendant below) to introduce in evidence its Exhibit "C" being a certified copy of the location certificate of the Uinta Tunnel No. 24 Lode mining claim.

XLVIII. The court erred in refusing to permit the plaintiff in error (defendant below) to introduce in evidence its Exhibit "D" being a certified copy of the location certificate of the Uinta Tunnel No. 25 Lode mining claim.

XLIX. The court erred in refusing to permit the plaintiff in error (defendant below) to introduce in evidence its Exhibit "E" being a certified copy of the location certificate of the Uinta Tunnel No. 26 Lode mining claim.

L. The court erred in refusing to permit the plaintiff in error (defendant below) to prove, by W. R. Mason as a witness, what work was done upon the Uinta tunnel on and after November, A. D. 1891.

LI. The court erred in refusing to permit the plaintiff in error (defendant below) to prove by W. R. Mason as a witness, that in the month of November, 1891, he went to what now appears to be the portal of the Uinta tunnel, and upon the unoccupied and unappropriated public domain, and started to work thereon; that afterwards and on the 18th day of February, 1892, the witness W. R. Mason, who was then a citizen of the United States over the age of twenty-one years, together with William E. Hall, who was likewise a citizen of the United States and over the age of twenty-one years, and one Herman Teitija, who was also a citizen of the United States and over the age of twenty-one years, located the Uinta Tunnel claim
183 and tunnel site and placed a notice at the portal of the tunnel containing the name of tunnel, giving its distances and courses and the names of locators or claimants; that from the time of the location thereof up to the month of September 1895, the tunnel was worked continuously and diligently and there was no time when it remained idle for a period to exceed three months, and that the location was made in good faith and prosecuted with all the diligence that he and the locators thereof could prosecute the same until September, 1894, when it passed out of the hands of Mason, Hall, and Teitija to Thomas J. Maloney. That at the time of the location and the making out of the location certificate of the Uinta tunnel on the 18th day of February 1892, the same was surveyed; that the surface boundaries thereof were marked by substantial posts hewed in towards the bore of the tunnel, and that the tunnel was marked by posts running along the bore of the tunnel for a distance of three thousand feet and for a distance of fifteen hundred feet on each side thereof.

LII. The court erred in refusing to permit the plaintiff in error

(defendant below) to prove, by W. R. Mason, as a witness, that at the time of the location of the Uinta tunnel in February, 1892, and for more than a year thereafter there had been no discovery whatsoever of any kind nature or description of ore in the discovery shafts of either the Little Mary or Ocean Wave lodes and mining claims or upon any other part or portion of the territory embraced within the surface boundaries of either of said lodes and mining claims.

LIII. The court erred in refusing to permit the plaintiff in error (defendant below) to introduce in evidence its Exhibit "F" being a certified copy of the location certificate of the Uinta tunnel.

LIV. The court erred in refusing to permit the plaintiff in error (defendant below) to prove by T. J. Maloney as a witness, a continuous working of the Uinta tunnel.

LV. The court erred in refusing to permit the plaintiff in error (defendant below) to prove, by T. J. Maloney as a witness, that from the time he sold the half interest to the time he parted with the entire interest to Mr. Doyle it was worked with great dispatch and great diligence and a plant of machinery was placed at the portal of the tunnel at an expense of $10,000 or $15,000.

LVI. The court erred in refusing to permit the plaintiff in error (defendant below) to prove by James Doyle as a witness, that immediately after he became interested in and became the owner of the tunnel he placed a plant of machinery therein at an
184 expense of $15,000; that from that time on the tunnel was driven with great dispatch; that he expended in and about the driving of the bore of the tunnel the further sum of $50,000; that no objection was made by the Creede and Cripple Creek Mining and Milling Company, its officers servants, or employees against the working of the tunnel; that no objection had been made by them until the tunnel was driven to its present face, a distance of 1,100 feet beyond the easterly side line of the Ocean Wave lode, and then objection was only made when the then owner of the tunnel had uncovered and discovered a vein of ore from which he was mining, extracting, and selling rich and valuable bodies of ore.

LVII. The court erred in refusing to permit the plaintiff in error (defendant below) to prove, by James Doyle as a witness, that at the time of driving the tunnel through the territory embraced in the surface boundaries of the Little Mary and Ocean Wave Lode mining claims the control of the stock of the plaintiff was held by parties other than those that now have control of it, and that the parties now having control and who instituted this suit purchased the control of the stock for the purpose of annoying and harrassing this witness in the driving and prosecuting of his tunnel and to prevent him from extracting the ore and mineral which he had uncovered and discovered in driving the tunnel.

LVIII. The court erred in refusing to permit the plaintiff in error (defendant below) to prove, by James Doyle, as a witness, that at the time the bore of the tunnel was being driven through the Ocean Wave and Little Mary lodes the then officers and agents of the Creede and Cripple Creek Mining and Milling Company the

owners of the Little Mary and Ocean Wave Lode claims, acquiesced in the driving of said tunnel through said property.

LIX. The court erred in refusing to permit the plaintiff in error (defendant below) to introduce in evidence its Exhibit "F," being a certified copy of the location certificate of the Black Jasper Lode mining claim.

LX. The court erred in refusing to permit the plaintiff in error (defendant below) to introduce in evidence its Exhibit "H" being a certified copy of the location certificate of the Uinta Tunnel No. 1 Lode mining claim.

LXI. The court erred in receiving in evidence, over and against the objection and exception of the plaintiff in error (defendant below) the verdict of the jury herein.

LXII. The court erred in refusing to grant the motion of the defendant for a new trial.

185 LXIII. The court erred in the rendition and entry of judgment against the plaintiff in error (defendant below).

CHARLES J. HUGHES, JR., AND
SCOTT ASHTON,
Attorneys for Plaintiff in Error.

Indorsed: No. 3658, div. (—) In the United States court of appeals. The Uinta Tunnel Mining and Transportation Company *vs.* The Creede and Cripple Creek Mining and Milling Co. Assignment of errors. Filed Mar. 29, 1902. Robert Bailey, clerk as March 4, 1902.

UNITED STATES OF AMERICA, } ss:
Eighth Judicial District, }

In the United States Circuit Court of Appeals for the Eighth Judicial District.

THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY, Plaintiff in Error,
vs.
THE CREEDE AND CRIPPLE CREEK MINING AND MILLING COMPANY, Defendant in Error.

To the honorable judges of the United States court of appeals for the eighth judicial district:

Now comes The Uinta Tunnel Mining and Transportation Company, plaintiff in error, and petitions this honorable court to allow a writ of error to be directed to the circuit court of the United States for the district of Colorado, to remove to this the United States circuit — of appeals for the eighth circuit, for review thereof, the record in the case lately pending in said court below, wherein the above named plaintiff in error was defendant and the above named

defendant in error was plaintiff, and particularly the judgment rendered by the circuit court in the said cause.

Your petitioner respectively states that he has this day filed herewith his assignment of errors committed by the court below in said cause, and intended to be urged by your petitioner and plaintiff in error in the prosecution of this his suit in error.

Dated March 29th, A. D. 1902.

CHARLES J. HUGHES, JR., AND
SCOTT ASHTON,
Attorneys for Plaintiff in Error.

Indorsed: No. 3658. In the U. S. circuit court of appeals The Uinta Tunnel M. & M. Company *vs.* The Creede and Cripple Creek M. & M. Co. Petition for writ of error. Filed Mar. 31, 1902. Robert Bailey, clerk.

186

THE UNITED STATES OF AMERICA, }
District of Colorado. }

Know all men by these presents, that we, The Uinta Tunnell Mining and Transportation Co. F. M. Woods and H. E. Woods are held and firmly bound unto The Creede and Cripple Creek Mining and Milling Company in the full and just sum of three hundred dollars to be paid to the said The Creede and Cripple Creek Mining Company, its successors or assigns, to which payment well and truly to be made, we bind ourselves our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5th day of March in the year of our Lord one thousand nine hundred and two.

Whereas, lately, at the November term, A. D. 1902, of the circuit court of the United States, for the district of Colorado, sitting at Denver, in a suit pending in said court between The Creede and Cripple Creek Mining Company plaintiff and The Uinta Tunnel Mining and Transportation Company, defendant, judgment was rendered against the said The Uinta Tunnell Mining and Transportation — for possession of the premises described in the complaint and for costs and the said Uinta Tunnel Mining and Transportation Company having obtained a writ of error to the United States circuit court of appeals for the eighth circuit to reverse the judgment of the said circuit court; and a citation directed to the said The Creede and Cripple Creek Mining and Milling Company citing and admonishing it to be and appear, in the United States circuit court of appeals, for the eighth circuit at the city of St. Louis, Missouri sixty days from and after the date of said citation.

Now, the condition of the above obligation is such that if the said The Uinta Tunnel Mining and Transportation Company shall prosecute said writ of error to effect, and answer all damages

and costs, if it fail to make good its plea, then the above obligation to be void, else to remain in full force and virtue.

[Seal Uinta T. M. & T. Co.]

THE UINTA TUNNEL, MINING & TRANSPORTATION CO., [SEAL.]
By F. M. WOODS, *Sec'y.* [SEAL.]
F. M. WOODS. [SEAL.]
H. E. WOODS. [SEAL.]

Sealed and delivered in presence of
—— ——.

Approved
JOHN A. RINER, *Judge.*

187 *Justification.*

THE UNITED STATES OF AMERICA, *District of Colorado,* } ss:

F. M. Woods and H. E. Woods, sureties on the within bond, being each first duly sworn, deposes and sa*ith* that he is worth in property not exempt from execution the sum below set opposite his name that is to say:

As to F. M. Woods, three hundred dollars. As to H. E. Woods, three hundred dollars. As to —— ——, — dollars, over and above all his just debts and liabilities, and in property subject to levy and sale upon execution.

F. M. WOODS.
H. E. WOODS.

Subscribed and sworn to before me, at Denver, this sixth day of March, A. D. 1902.

[NOTARIAL SEAL.] FREDERICK E. BROWNE,
Clerk, Notary Public.

My commission expires January 2, 1906.

Indorsed: No. 3658. Circuit court of the United States, district of Colorado. The Creede and Cripple Creek M. & M. Co. *vs.* The Uinta Tunnel Mining and Transportation Company. Bond on writ of error. $300.00. Filed Mar. 31, 1902. Robert Bailey, clerk.

Writ of Error to United States Circuit Court of Appeals, Eighth Circuit

THE UNITED STATES OF AMERICA:

UNITED STATES OF AMERICA, *District of Colorado,* } ss:

The President of the United States of America to the honorable

the judges of the United States circuit court for the district of Colorado, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you at the November term, 1902, thereof, between The Creede and Cripple Creek Mining and Milling Company *vs.* The Uinta Tunnel Mining and Transportation Company, a manifest error hath happened, to the great damage of the said The Uinta Tunnel Mining and Transportation Company as by its complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals, for the eighth circuit, together with this writ, so that you have the said record and proceedings aforesaid at the city of St. Louis Missouri, and filed in the office of the clerk of the United States circuit court of appeals, for the eighth circuit, on or before the 28th day of May, A. D. 1902, to the end that the record and proceedings aforesaid being inspected, the United States circuit court of appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

188

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 31st day of March in the year of our Lord, one thousand nine hundred and two and of the Independence of the United States the 126th year. Issued, at office in Denver, in said district, with the seal of the United States circuit court, for the district of Colorado, and dated as aforesaid.

Seal United States Circuit Court, District of Colorado.

ROBERT BAILEY,
Clerk United States Circuit Court, District of Colorado,
By CHARLES W. BISHOP,
Deputy Clerk.

Allowed by
JOHN A. RINER, *Judge.*

Return.

THE UNITED STATES OF AMERICA, }
District of Colorado, } *ss:*

In obedience to the command of the within writ, I herewith transmit to the honorable, the United States circuit court of appeals a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

Seal United States Circuit Court, District of Colorado.

In witness whereof, I hereunto subscribe my name, and affix the seal of said United States circuit court, for the district of Colorado, at Denver, in said district, this 9th day of May 1902.

ROBERT BAILEY, *Clerk.*

No. 3658. United States circuit court of appeals eighth circuit. The Uinta Tunnel, Mining and Transportation Company, 189 plaintiff in error, *vs.* The Creede and Cripple Creek Mining and Milling Company, defendant in error. Writ of error. To U. S. circuit court, district of Colorado. Filed Mar. 31, 1902. Robert Bailey, clerk.

UNITED STATES OF AMERICA, *Eighth Judicial Circuit,* } *ss:*

In the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

The United States of America to the Creede and Cripple Creek Mining and Milling Company, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error, filed in the clerk's office of the United States circuit court for the district of Colorado, sitting at Denver, wherein The Uinta Tunnel Mining and Transportation Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Seal United States Circuit Court, District of Colorado.

Witness, the Honorable John A. Riner, judge of the United States district court for the district of Wyoming assigned to hold the circuit and district courts for the district of Colorado, this 31st day of March, A. D. 1902.

JOHN A. RINER, *Judge.*

Attest:

ROBERT BAILEY, *Clerk,*
By CHARLES W. BISHOP, *Deputy Clerk.*

Proof of Service.

THE UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

Received a copy of the within citation this 31st day of March, A. D. 1902.

THOMAS, BRYANT & LEE,
Attorneys for Defendant in Error.

Original. No. 3658. United States circuit court of appeals, eighth circuit. Uinta Tunnel Mining and Transportation Company *vs.* The Creede and Cripple Creek Mining and Milling Com-
190 pany. Citation. Filed Mar. 31, 1902. Robert Bailey, clerk. Charles J. Hughes, Jr., attorney for pl'ff in error.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

I, Robert Bailey, clerk of the circuit court of the United States for the district of Colorado, do hereby certify the above and foregoing pages numbered from one (1) to two hundred and seventy-seven (277) both inclusive, to be a true, perfect, and complete transcript and copy of the record and proceedings, and of all thereof, heretofore filed or entered of record in said court and in a certain cause lately in said court pending wherein The Creede and Cripple Creek Mining and Milling Company was plaintiff, and The Uinta Tunnel Mining and Transportation Company was defendant, as fully and completely as the same still remain on file and of record in my office at Denver.

In testimony to the above, I do hereunto sign my name and affix the seal of said court at Denver in said district, this 9th day of May, A. D. 1902.

Seal United States Circuit Court, District of Colorado.

ROBERT BAILEY, *Clerk.*

Filed May 22, 1902.

JOHN D. JORDAN, *Clerk.*

191 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing printed record of one hundred ninety pages in the case The Uinta Mining and Transportation Company, plaintiff in error, *vs.* The Creede and Cripple Creek Mining and Milling Company, No. 1762, was printed under my supervision and is identical with the printed record upon which said cause was heard and decided in the circuit court of appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court of appeals, at office in the city of St. Louis, Missouri, in the eighth circuit, this seventh day of January, A. D. 1903.

Seal United States Circuit Court of Appeals, Eighth Circuit.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

192 Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the September term, 1902, of said court, begun and held at the United States court house in the city of Denver, Colorado, on the first Monday in September, to-wit, the first day of September, A. D. 1902, and which said September term, 1902, was adjourned from the city of Denver, Colorado, to the city of St. Louis, Missouri, as provided by law, before the Honorable Henry J. Caldwell, Honorable Walter H. Sanborn, and the Honorable Amos M. Thayer, circuit judges.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore—to-wit: a transcript of record pursuant to a writ of error directed to the circuit court of the United States for the district of Colorado, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, in a certain cause wherein The Uinta Tunnel Mining and Transportation Company was plaintiff in error, and The Creede and Cripple Creek Mining and Milling Company was defendant in error, which said transcript of record was filed and docketed in said circuit court of appeals on May 22, 1902, as No. 1762.

That thereafter the following proceedings were had in said cause, in said circuit court of appeals, viz:

193 (*Appearance of Counsel for Plaintiff in Error.*)

And on the twenty-sixth day of May, A. D. 1902, an appearance of counsel for plaintiff in error was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY, Plaintiff in Error, *vs.* THE CREEDE AND CRIPPLE CREEK MINING COMPANY.	No. 1762.

The clerk will enter my appearance as counsel for the plaintiff in error.

CHARLES J. HUGHES, JR.
SCOTT ASHTON.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1762. The Uinta Tunnel Mining and Transportation Co., pl'ff in error, *vs.* The Creede and Cripple Creek Mining Co. Appearance

Filed May 26, 1902. John D. Jordan, clerk. Charles J. Hughes, Jr., Scott Ashton, counsel for pl'ff in error.

(*Appearance of Counsel for Defendant in Error.*)

And on the twenty-eighth day of May, A. D. 1902, an appearance of counsel for defendant in error was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

THE UINTA TUNNEL MINING AND TRANSPORTATION COMPANY, Plaintiff in Error,
vs.
THE CREEDE AND CRIPPLE CREEK MINING COMPANY. } No. 1762.

194 The clerk will enter my appearance as counsel for the defendant in error.

C. S. THOMAS.
W. H. BRYANT.
H. H. LEE.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No. 1762. The Uinta Tunnel Mining and Transportation Co., pl'ff in error, *vs.* The Creede and Cripple Creek Mining Co. Appearance. Filed May 28, 1902. John D. Jordan, clerk. C. S. Thomas, W. H. Bryant, H. H. Lee, counsel for def't in error.

(*Stipulation to Correct Writ of Error and Citation.*)

And on the seventh day of June, A. D. 1902, a stipulation to correct the writ of error and citation was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

UNITED STATES OF AMERICA, *Eighth Judicial District,* } *ss:*

In the United States Circuit Court of Appeals for the Eighth Judicial Circuit.

THE UINTA TUNNEL MINING AND TRANSPORTATION Company, Plaintiff in Error,
vs.
THE CREEDE AND CRIPPLE CREEK MINING AND MILLING Company, Defendant in Error. } Stipulation.

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the citation and writ of error heretofore filed in the above entitled cause, may be amended and

changed to read as follows: "The Creede and Cripple Creek Mining and Milling Company," instead and in place of, "The Creede and Cripple Creek Mining Company," as the same is now addressed, and the court is hereby requested to enter an order directing such change to be made by the clerk of this honorable court.

CHARLES J. HUGHES, JR., AND
SCOTT ASHTON,
Attorney for Plaintiff in Error.
H. H. LEE,
Attorney for Defendant in Error.

Dated at Denver, Colorado, May 31st, 1902.

195 (Endorsed:) No. 1762. In U. S. circuit court of appeals. The Uinta, Tunnel Mining and Transportation Co., *vs.* The Creede and Cripple — Mining & Milling Co. Stipulation to correct writ of error and citation. Filed Jun- 7, 1902. John D. Jordan, clerk. Charles J. Hughes, Jr., and Scott Ashton, att'ys for pl't'ff in error.

(*Order Correcting Writ of Error and Citation.*)

And on the ninth day of June, A. D. 1902, in the record of the proceedings of said circuit court of appeals is an entry in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1902.

MONDAY, *June* 9, 1902.

UINTA TUNNEL MINING AND TRANSPORTATION COMPANY, Plaintiff in Error,
vs.
THE CREEDE AND CRIPPLE CREEK MINING COMPANY. } No. 1762.

In error to the circuit court of the United States for the district of Colorado.

This cause came on to be heard upon the stipulation of counsel for the respective parties for an order to correct the name of the defendant in error in the writ of error and citation in this cause.

On consideration whereof, it is now here ordered by this court, and in pursuance of said stipulation, that the name of the defendant in error be corrected in the writ of error and citation in this cause, so that the same shall read "The Creede and Cripple Creek Mining and Milling Company," instead of "The Creede and Cripple Creek Mining Company."

(*Appearance of Counsel for Plaintiff in Error.*)

And on the first day of September, A. D. 1902, an appearance of

counsel for plaintiff in error was filed in the clerk's office of said circuit court of appeals in said cause, in the words and figures following, to-wit:

196 United States Circuit Court of Appeals, Eighth Circuit.

UINTA TUNNEL, MINING AND TRANSPORTATION COMPANY, Plaintiff in Error, *vs.* CREEDE AND CRIPPLE CREEK MINING AND MILLING Company.	No. 1762.

The clerk will enter my appearance as counsel for the plaintiff in error.

GERALD HUGHES.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. No 1762. Uinta Tunnel Mining and Transportation Co., pl'ff in error, *vs.* Creede and Cripple Creek Mining and Milling Co. Appearance. Filed Sept. 1, 1902. John D. Jordan, clerk. Gerald Hughes, counsel for pl'ff in error.

(*Order of Submission.*)

And on the first day of September, A. D. 1902, in the record of the proceedings of said circuit court of appeals is an order of submission in said cause, in the words and figures, following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, September Term, 1902.

MONDAY, *September* 1, 1902.

UINTA TUNNEL, MINING AND TRANSPORTATION COMPANY, Plaintiff in Error, *vs.* THE CREEDE AND CRIPPLE CREEK MINING AND MILLING Company.	No. 1762.

In error to the circuit court of the United States for the district of Colorado.

This cause having been called for hearing in advance of No. 1757, United States *v.* Gentry, by agreement of parties, argument was commenced by Mr. Gerald Hughes for plaintiff in error, con-
197 tinued by Mr. H. H. Lee for defendant in error and concluded by Mr. Scott Ashton for plaintiff in error.

Thereupon, this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

(*Opinion.*)

And on the eighteenth day of November, A. D. 1902, an opinion of said circuit court of appeals was filed in said cause, in the words and figures following, to-wit:

198 United States Circuit Court of Appeals, Eighth Circuit, September Term, A. D. 1902.

THE UINTA TUNNEL MINING AND TRANSPORTATION Company, Plaintiff in Error,
vs.
THE CREEDE AND CRIPPLE CREEK MINING AND MILLING Company, Defendant in Error. } No. 1762.

In error to the circuit court of the United States for the district of Colorado.

Mr. Gerald Hughes and Mr. Scott Ashton (Mr. Charles J. Hughes, Jr., was with them on the brief) for plaintiff in error.

Mr. H. H. Lee (Mr. C. S. Thomas, Mr. A. T. Gunnell, Mr. W. H. Bryant, Mr. T. M. Patterson, Mr. E. F. Richardson and Mr. H. N. Hawkins were with him on the brief) for defendant in error.

Before Caldwell, Sanborn, and Thayer, circuit judges.

Syllabus.

1. Mining—Tunnel-site claimant need not adverse lode claim.—The claimant of a tunnel site located across lode claims is not required by sections 2325 and 2326, Revised Statutes, to file an adverse claim, when applications for patents of the lode claims are made, in order to protect his rights in those cases in which his interest in the lode claims is so uncertain, contingent and intangible that it cannot be fairly litigated when the applications are made.
2. Mining—Patents of lode claims subject to rights of claimants of tunnel sites located before the entries.—Patents of lode mining claims based on entries made after the location of a claim for a tunnel site across them are subject to the rights of the claimants of the tunnel site in cases in which his rights therein were so uncertain, contingent and intangible that they could not be fairly litigated when the applications for the patents were made.

199 3. Land Department—Mining claims—Entries and patents—Estoppel.—The judgments of the Land Department permitting entries of land and the patents based upon those entries bind all the parties to the proceedings which resulted in them and all those claiming interests acquired from such

parties subsequent to the entries. But they do not estop those who were not, and were not required to be parties to the proceedings from establishing by the customary evidence the truth relative to any fact material to their claims in any litigation between them and the holders under the patents.

4. Mining—Entries and patents of lode claims constitute no estoppel of the owner of a prior tunnel claim.—Entries and patents of lode mining claims in proceedings to which a claimant of a tunnel site, located across them prior to the entries, was not, and was not required to be a party will not estop him from establishing by the testimony of witnesses who know, and by other customary evidence, the fact that no discoveries of lodes or mines of mineral had been made in the lode claims before the claim for the tunnel site was located across them.

5. Certificates of location not conclusive evidence of facts they recite.—Certificates of location of mining claims are not conclusive evidence of the facts which they recite against parties who claim the land they describe adversely to their makers.

Statement.

The writ of error in this case challenges the trial of an issue involving the rights of the respective parties to the action to the possession of the space within the bore of a tunnel where it passes through two lode mining claims beneath the surface of the earth. The Creede and Cripple Creek Mining and Milling Company was the plaintiff and The Uinta Tunnel Mining and Transportation Company was the defendant in the action below, and they will be so styled in this statement and in the opinion which follows. The plaintiff was the owner of two lode mining claims called the Ocean Wave and the Little Mary, which were entered for patent on August 5, 1892, and were patented on December 21, 1893. The plaintiff alleged in its complaint that these claims were duly located and discovered on January 2, 1892. The defendant was the owner of a claim to a tunnel site which extended through these lode claims beneath the surface of the earth and which was located on January 13, 1892. It also owned certain lode claims which had been located on blind veins that had been discovered in the tunnel after the lode claims of the plaintiff had been patented. The mining claims of the plaintiff were between the portal of the tunnel and the defendant's lode claims and the latter had driven its tunnel through the plaintiff's claim and was using it as a way to bring to the surface of the earth the ore it was extracting from its blind veins. The real issue was whether or not the defendant had the right of way
200 along the bore of its tunnel through the lode claims of the plaintiff, and the determination of this issue depended upon the priority of their respective claims. The plaintiff asserted that its claims were discovered and located on January 2, 1892. The defendant averred that its tunnel was located on January 13, 1892, and that no discovery of mineral in rock in place was made within the

lode claims of the plaintiff until after its tunnel site was located. These averments of the defendant were stricken from the answer and the evidence which it offered to sustain them was rejected. Exceptions were taken to these rulings and there was a verdict and judgment for the plaintiff

SANBORN, circuit judge, after stating the case as above, delivered the opinion of the court:

When the claim to a tunnel site has been located before the entry of the conflicting lode mining claims which have subsequently passed to patents, is the question, whether discoveries of mineral in rock in place were made within the lode claims before the location of the claim to the tunnel site, open to determination by means of evidence or testimony *de hors* the patents? This is the principal question presented by this record. If the query were whether or not it is competent to show by proof outside the receiver's receipts or the patents that there had been no location of the patented claims or no discovery of the lodes therein before they were entered for patent, there would be no doubt that a negative answer must be returned to the question for the reason that this is an issue between the parties to a proceeding before the Land Department which that tribunal necessarily considers and decides when it permits the entries of the lands, and its decisions of questions within its jurisdiction are impervious to collateral attack. *King v. McAndrews*, 111 Fed. 860, 863, 50 C. C. A. 29, 32. This was the question which the Supreme Court answered in *Calhoun Gold Mining Co. v. Ajax Gold Mining Co.*, 182 U. S. 499, 502, 503, 510, and while, if the language of the opinion in that case is carelessly read without knowledge of, or reference to the question actually before the court, it may seem to be broader, a careful examination of the facts which the record there discloses demonstrates the proposition that the decision went no farther. In that case the receiver's receipts on the lode claims of the appellee had been issued before the claim to the tunnel site was located. (Page 502.) In a proceeding between the lode claimants and the United States the Land Department had decided that mineral in place had been discovered within the claims and had permitted their entry. Subsequent to this decision and to these entries the owner of the claim to the tunnel site located it across the lode claims and upon the trial offered to prove that there had been no discovery of mineral in place within those claims before they were entered. The trial court rejected the offer. The Supreme Court said: "The ruling was right. The patents were proof of the discovery and related back to the date of the locations of the claims. The patents could not be collaterally attacked." Thus, it may be seen that the only proposition there decided was that one who had initiated no claim upon lands when they were entered by other claimants could not subsequently collaterally attack the decision of the Land Department that there had been a discovery of
201 mineral in place upon the claims at some time before they were entered.

Counsel for the plaintiff rely upon the decision and opinion in this case and insist that it fairly sustains the rulings of the court below. But there are radical and controlling differences between the question presented in that case and the issue of law before us in the case in hand.

1. A judgment is binding upon the parties to the proceeding in which it is rendered and upon their privies. The parties to the judgments of the Land Department by which it allowed the entries of the lode claims in the case of the gold mining company were the United States and the owners of those claims. No other parties had or claimed any interest in the land at the time those entries were made. The judgments and the patents accordingly bound and estopped these parties and their subsequent assignees. They estopped all parties who initiated claims upon, or interests in the lands under either of the parties to the proceeding subsequent to the judgments of the Land Department. The claimant of the tunnel site in that case initiated his claim under the United States, one of the parties to that proceeding, subsequent to the judgments. It was therefore a privy of the United States and was estopped by the judgments of the Land Department from proving that no discoveries had been made upon the lode claims before these judgments were rendered. This is not the case in the action before us. The claim to the tunnel site was located on January 13, 1892. The judgments of the Land Department allowing the entries were rendered on August 5, 1892. At that time there were three parties interested in the land, the lode claimants, the United States and the claimant of the tunnel site. Two of these parties, the lode claimants and the United States, were parties to the proceedings and were estopped by the judgments and the patents. One of them was not a party to any of these proceedings, to the judgments or to the patents and, upon familiar principles, was neither bound by them nor estopped by them from presenting and proving according to the established rules of evidence in trials under the common law the fact that no discoveries had been made on the lode claims before the location of its tunnel site, the fact essential to the validity of its claim upon, and interest in the land.

Not only was the claimant of the tunnel site not a party to the proceedings in the Land Department which resulted in the entries and patents to the lode claims, but it was neither required to become such a party nor to submit its claims and interests in the lands to the adjudication of that department at that time because its rights therein were then too uncertain, contingent and intangible for determination. When the applications for the patents of the lode claims were filed, the blind veins which have induced the use of the tunnel through the lands in controversy had not been discovered, the tunnel had not been driven into the land and it was impossible to know whether or not the claimant of the tunnel site would ever acquire any right to use this land for the purpose to which it is now devoted. The claimant of a tunnel site is not required by sections 2325 and 2326, Revised Statutes, to file an adverse claim and submit his rights in the lode claims it crosses to

adjudication by the Land Department upon the filing of applications for patents to those claims when his rights are at that time uncertain, contingent and intangible. *Enterprise Min. Co. v. Rico-*
202 *Aspen Min. Co.*, 167 U. S. 108, 112; *Enterprise Min. Co. v. Rico-Aspen Consol. Min. Co.*, 13 C. C. A. 390, 399, 400, 66 Fed. 200, 209, 210.

2. The issue whether the discoveries in the lode claims were made before the location of the tunnel site in the Ajax Gold Mining Company's case was necessarily considered and adjudged by the Land Department when it permitted the entries of the lode claims. The finding that such discoveries had been made before the date of the entries was indispensable to the decision that the lode claimants were entitled to make the entries so that that finding must have been made by the department. But the location of the tunnel site in that case was subsequent to these entries. Hence the finding that the discoveries were made before the entries was necessarily a finding that they were made before the location of the tunnel site and it was, as we have seen, binding upon the claimant of the tunnel site, because it was claiming a right initiated after this adjudication under a party to the judgments.

It is not so in the case before us. The question here is whether or not discoveries were made in the lode claims prior to January 13, 1892, the date of the location of the claim to the tunnel site. The determination of this question was neither indispensable nor material to the adjudication made by the Land Department on August 5, 1892, that the lode claimants were entitled to enter the land, and there is nothing to show that this issue was ever considered or decided by that department in reaching its conclusion. The only question relative to the discoveries that it was required to determine was whether or not they had been made prior to August 5, 1892, when the entries were permitted, and the decision of that question left entirely untouched the issue in this case whether they were made before or after the location of the tunnel site on January 13, 1892.

3. When the entries were made in the Ajax Gold Mining Company's case no claim to a tunnel site had been located or staked upon or across the lode claims and the entries of them and the patents to them vested the title in the claimants free from any right or claim to a tunnel site.

It is otherwise in the case at bar. The claim to the tunnel site was located and staked out across these lode claims before they were entered. Under the Revised Statutes and the law the entries and patents of these claims vested the title to them subject to the rights of the prior claimant of the tunnel site just as they vested it subject to the right of an owner of an adjoining lode claim to follow on its dip through a side line and through the patented territory of these lode claimants any vein which has its apex in his claim. *Enterprise Min. Co. v. Rico-Aspen Consol. Min. Co.*, 13 C. C. A. 390, 400, 66 Fed. 200, 210; *Mining Co. v. Campbell*, 135 U. S. 286, 301; *Hall v. Mining Co.*, Morr. Min. Rep. (3d ed.) p. 282; *Branagan v. Dulaney*, 8

Colo. 408, 412; *Lee v. Stohl*, 9 Col. 208, 210; *Morgenson v. Milling Co.*, 11 Colo. 176, 179.

While, therefore, it is a flagrant attack upon a patent to attempt to maintain a claim initiated subsequent to the entry on which it rests, it is no such attack to assert the rights of the claimant of a tunnel site located before the entry of the land against a patent of it to a lode claimant, because under the statutes and the law such a patent always issues subject to those rights.

203 Notwithstanding all these considerations counsel for the plaintiff insist that the defendant is estopped from pleading and proving that no discoveries of mineral in place were made in the lode claims before the location of the tunnel site on January 13, 1892, because certificates of location of the lode claims were filed on January 2, 1892, which declare that such discoveries were made on that day and it is a well-settled principle that patents relate back to, and take effect upon the dates of the initiation of the rights on which they are founded.

But the certificates of location are not conclusive proof of the facts which they recite against those asserting rights adverse to their makers. They are competent evidence of the fact that they were made and filed and hence of an important link in the chain of the plaintiff's title. But when the existence of the facts which they recite is challenged they are but the *ex parte* statements of interested parties and there is nothing in them or in their relation to the property or the parties to bind those claiming the lands adversely to their makers or to estop them from establishing the truth by the customary oral and written evidence.

Nor is there anything in the doctrine of relation to work such an estoppel. Grant that the patents relate back and take effect as of the date of the initiation of the lode claims, yet since the patents are subject to the rights of the claimant of the tunnel site when they are issued they are still subject to those rights when they have related back to the inception of the claims upon which they rest.

Moreover, the averment of the defendant is that no discoveries were made in the lode claims until after the location of its claim to the tunnel site. If this allegation is true, it may be doubted whether the lode claims can be said to have been initiated before the claim for the tunnel site was located. "No location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claim located." Rev. Stat., § 2320; *Enterprise Min. Co. v. Rico-Aspen Min. Co.*, 167 U. S. 108, 112. It is true that subsequent discoveries may validate earlier locations and that the latter may then inure to the benefit of the locators as against the United States and all parties whose claims were initiated subsequent to the discoveries. But they would inure to their benefit as of the dates of the discoveries and not as of the dates of the locations and they would neither destroy nor affect intervening rights. The marking of boundaries and filing of location certificates may precede discovery or discovery may precede them, but no location is valid until both are complete. The earlier act then inures to the benefit of the

locator as of the date of the later, subject to all rights which have intervened between them. *Erwin v. Perego*, 35 C. C. A. 482, 485, 93 Fed. 608, 611; *Jupiter Min. Co. v. Bodie Consol. Min. Co.*, 11 Fed. 666, 676; 4 Morr. Min. Rep. 411, 423; *North Noonday Min. Co. v. Orient Min. Co.*, 1 Fed. 522, 531; *Zollars v. Evans*, 5 Fed. 172, 175; *Strepy v. Stark*, 5 Pac. 111, 114; *Thompson v. Spray*, 72 Cal. 528, 533; *Erhardt v. Boaro*, 113 U. S. 527, 536. There was, therefore, no valid location of the lode claims until the discoveries within them were made and it is held by the circuit court of appeals of the ninth circuit in *Last Chance Mining Co. v. Tyler Min. Co.*, 61 Fed. 557, 565, 9 C. C. A. 613, 621, that a patent for a mining claim only relates back to the time when a valid location was first made. If this is a correct view of the law, the patents in this case could not relate back to a time anterior to the dates of the discoveries, and if
204 those were subsequent to the location of the tunnel site they could not affect defendant's rights.

If litigation for the possession of the property in controversy in this action had arisen between the lode claimants and the claimant of the tunnel site at a time prior to the entries of the lode claims, the question whether or not discoveries of mineral in place had been made in the lode claims before the location of the tunnel site would have been decisive of the issue and the testimony of witnesses who knew the facts and other evidence competent in the customary trials of such issues at law would have been admissible to determine the question. What is there in the entries and the patents to deprive the defendant of its right to try this issue now upon like evidence? Its claim to this land had attached before those entries were made. It was not a party to the proceedings in the Land Department which resulted in the adjudication that the lode claimants were entitled to enter it. It was not required to file an adverse claim and to submit its rights to the adjudication of that department when the applications for the patents were made. The adjudication of the Land Department which permitted the entries was *res inter alios acta* and ineffectual to estop the defendant. The department was not required to determine, and it did not decide the question here at issue, and under the statutes and the decisions of the Federal courts the entries and the patents were made subject to the rights of the claimant of the tunnel site which had attached before the Land Department permitted the entries. Our answer to the question which this case presents is, that when the claim to a tunnel site has been located before the entry of conflicting lode claims, which have subsequently passed to patents, the question whether discoveries of mineral in place were made in the lode claims before or after the location of the claim to the tunnel site was perfected is open to determination by means of the testimony of witnesses and other competent evidence *de hors* the patents in any litigation between the parties involving their conflicting claims. *Last Chance Min. Co. v. Tyler Min. Co.*, 61 Fed. 557, 565–7, 9 C. C. A. 613, 621–623; *Champion Min. Co. v. Consolidated Wyoming Gold Min. Co.*, 75 Cal. 78;

Iron Silver Min. Co. v. Campbell, 135 U. S. 286; *Davis' Adm'r v. Weibbold*, 139 U. S. 507.

The averments that no discoveries of mineral in place within the lode claims had been made before the location of the claim to the tunnel site should not have been stricken from the answer of the defendant and its evidence to sustain them should have been received. The question which has been considered is decisive of the issue whether or not the judgment below should be affirmed, and, as the other questions presented by the assignment of errors may not arise again, they will not now be considered. The judgment below must be reversed and the case remanded to the court below with directions to grant a new trial, and it is so ordered.

Filed November 18, 1902.

205 (*Judgment.*)

And on the eighteenth day of November, A. D. 1902, in the record of the proceedings of said circuit court of appeals is a judgment in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, September Term, 1902.

TUESDAY, *November* 18, 1902.

THE UINTA TUNNEL MINING AND TRANSPORTATION Company, Plaintiff in Error,
vs.
THE CREEDE AND CRIPPLE CREEK MINING AND MILLING Company. } No. 1762.

In error to the circuit court of the United States for the district of Colorado.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Colorado, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court, in this cause, be, and the same is hereby, reversed with costs; and that the Uinta Tunnel Mining and Transportation Company have and recover against the Creede and Cripple Creek Mining and Milling Company the sum of two hundred ninety eight and 40/100 dollars for its costs in this behalf expended and have execution therefor.

It is further ordered that this cause be, and the same is hereby remanded to the said circuit court with directions to grant a new trial.

November 18, 1902.

206 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing fourteen pages contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, in the United States circuit court of appeals for the eighth circuit, (except the transcript of the record from the circuit court of the United States for the district of Colorado) in a certain cause in said court wherein The Uinta Tunnel Mining and Transportation Company is plaintiff in error and The Creede and Cripple Creek Mining and Milling Company is defendant in error, as full, true and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of said circuit court at office in the city of St. Louis, Missouri, in the eighth circuit, this seventh day of January, A. D. 1903.

Seal United States Circuit Court of Appeals, Eighth Circuit.

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

207 In the Supreme Court of the United States.

THE UINTA TUNNEL MINING AND TRANSPORTATION Company, Petitioner,
vs.
THE CREEDE & CRIPPLE CREEK MINING AND MILLING Company, Respondent.
} Stipulation.

The petition and application for writ of certiorari to the United States circuit court of appeals for the eighth judicial district having heretofore been granted by the above court, and a certified transcript of the record of said cause from the United States circuit court of appeals having heretofore been filed with the clerk of the Supreme Court of the United States upon the application for said writ;

Now, therefore, pursuant to the practice in said court, the said certified transcript of record thus on file may by this stipulation be taken as the return to the said writ, thereby dispensing with the necessity of duplicating the copy thereof.

Dated at Denver, Colorado, this 23rd day of March, A. D. 1903.

A. T. GUNNELL,
W. H. BRYANT,
C. S. THOMAS,
H. H. LEE, *Counsel for Petitioner.*
CHARLES J. HUGHES, JR.,
Counsel for Respondent.

(Endorsed:) No. 1762. The Uinta Tunnel Mining and Transportation Co., plaintiff in error, *vs.* The Creede and Cripple Creek Min-

ing and Milling Co. Stipulation as to return to writ of certiorari. Filed Apr. 9, 1903. John D. Jordan, clerk.

208 UNITED STATES OF AMERICA, *ss*:

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

Being informed that there is now pending before you a suit in which The Uinta Tunnel Mining and Transportation Company, is plaintiff in error, and The Creede and Cripple Creek Mining and Milling Company is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the district of Colorado, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United
209 States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 17th day of March, in the year of our Lord one thousand nine hundred and three.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

210 *Return to Writ.*

UNITED STATES OF AMERICA, *Eighth Circuit,* } *ss*:

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of The Uinta Tunnel, Mining and Transportation Company, plaintiff in error, *vs.* The Creede and Cripple Creek Mining and Milling Company, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States circuit court of appeals for the eighth circuit, at office in St. Louis, Missouri, this ninth day of April, A. D. 1903.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

[Endorsed:] File No. 18,837. Supreme Court of the United States. No. 609, October term, 1902 The Creede & Cripple Creek Mining & Milling Co. *vs.* The Uinta Tunnel Mining & Transp'n Co. Writ of certiorari and return Filed Apr. 9—1903 John D. Jordan, clerk. Office of the clerk Supreme Court U. S. Filed Apr. 11 1903.